UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, D.C.

Royal Air, Inc., **COMPLAINANT** **v.** **City of Shreveport through the Shreveport Airport Authority,** **RESPONDENT**	**Docket No. 16-02-06** ***Issued January 9, 2004***

DIRECTOR'S DETERMINATION

I. INTRODUCTION

This matter is before the Federal Aviation Administration (FAA), Director of the Office of Airport Safety and Standards, to investigate pursuant to the Rules of Practices for Federally-Assisted Airport Proceedings found in Title 14 Code of Federal Regulations (CFR), part 16, Rules of Practice for Federally-Assisted Airport Enforcement Proceedings.

Royal Air, Inc. (Complainant) filed a formal Complaint pursuant to 14 CFR Part 16 against the City of Shreveport through the Shreveport Airport Authority (Respondent), the owner, operator, and sponsor of the Shreveport Downtown Airport. Complainant alleges the Respondent violated Title 49 United States Code (U.S.C.) § 40103(e) *Exclusive Rights*, and § 47107(a)(b), *General Written Assurances,* and related Federal Grant Assurances 22, *Economic Nondiscrimination*, and 23, *Exclusive Rights*, by preventing Complainant from establishing a commercial self-service fueling operation, failing to apply its minimum standards consistently, and allowing competing tenants on the airport to operate without paying appropriate rents and fees.

Specifically, Complainant alleges:

- Respondent unjustly delayed approval for Complainant to establish a commercial self-service fueling facility in violation of grant assurance 22, *Economic Nondiscrimination*, and grant assurance 23, *Exclusive Rights*.

- Respondent first consented to, and then withdrew approval for, Complainant to establish a commercial self-service fueling facility in violation of grant assurance 22, *Economic Nondiscrimination.*

- Respondent denied Complainant the opportunity to sell fuel in competition with another fixed-base operator on the airport in a violation of grant assurance 23, *Exclusive Rights*.

- Respondent required Complainant to adhere to a different set of minimum standards from those applied to its competing fixed-base operator regarding the placement of fuel storage tanks in violation of grant assurance 22, *Economic Nondiscrimination*.

- Respondent required Complainant to lease the minimum land area[1] and hangar and office space while permitting its competing fixed-base operator and a competing flight school and aircraft rental business to operate with less than the minimum space required in violation of grant assurance 22, *Economic Nondiscrimination*.

- Respondent required Complainant to maintain more stringent staffing levels than were required of its competing fixed-base operator in violation of grant assurance 22, *Economic Nondiscrimination*.

- Respondent required Complainant to adhere to minimum standards for maintenance and repair personnel while permitting unauthorized mechanics to operate on the airport without meeting the minimum standards in violation of grant assurance 22, *Economic Nondiscrimination*.

- Respondent required Complainant to meet the minimum standards for insurance coverage, but allowed its competitors to operate without the required minimum levels of insurance in violation of grant assurance 22, *Economic Nondiscrimination*.

- Respondent required Complainant to pay rent and fees that were not required of its competitors in violation of grant assurance 22, *Economic Nondiscrimination*.

These allegations and the issues to be resolved are addressed in this determination under three broad categories:

(A) Establishing a Commercial Fueling Facility:

Issue 1: Whether the Shreveport Airport Authority impeded Complainant's attempts to establish a commercial self-service fueling facility at the Shreveport Downtown Airport through deliberate delays, withdrawn approvals, and denied access in violation of grant assurances 22, *Economic Nondiscrimination*, and 23, *Exclusive Rights*.

[1] The term "land area" is synonymous with "ground space" in this determination.

(B) Enforcement of Minimum Standards:

Issue 2: Whether Respondent failed to enforce its minimum standards consistently among all tenants at the Shreveport Downtown Airport in violation of grant assurance 22, *Economic Nondiscrimination*.

(C) Collection of Rents and Fees:

Issue 3: Whether the Respondent permitted some aeronautical tenants to operate on the airport without paying appropriate rents and fees while requiring Complainant to pay such rents and fees in violation of grant assurance 22, *Economic Nondiscrimination*.

In addition to these three issues, the Director addresses the following preliminary issues: (1) Respondent's Motion to Dismiss and Affirmative Defenses, (2) Respondent's Motion to Dismiss as Moot, and (3) Complainant's Request for a Hearing. These preliminary issues, as well as the three issues identified above are discussed in detail under the analysis section (Section VI) of this determination.

Based on the Director's review and consideration of the evidence submitted, the administrative record designated at FAA Exhibit 1, the relevant facts, and the pertinent laws and policy, the Director concludes that the Respondent is in violation of grant assurance 22, *Economic Nondiscrimination*, regarding its inconsistent enforcement of various minimum standards. The Director finds the Respondent is not in violation of grant assurance 22, *Economic Nondiscrimination*, regarding Complainant's attempts to establish a commercial self-service fueling facility or Complainant's allegations of failure to charge or collect appropriate rents and fees. The Director also finds the Respondent is not in violation of grant assurance 23, *Exclusive Rights,* regarding any of the allegations raised in this Complaint.

The basis for the Director's conclusion is set forth herein.

II. AIRPORT

The Shreveport Downtown Airport is a public-use airport located approximately three miles north of Shreveport, Louisiana. The airport is owned and operated by the Shreveport Airport Authority. As of April 15, 2003, the Shreveport Downtown Airport had approximately 211 based aircraft (predominately single engine aircraft), 137 hangars, and 50,391 annual operations.[2]

The airport primarily serves general aviation corporate and recreational aircraft. At the time this Complaint was filed, businesses on the airport included two fixed-base

[2] *See* FAA Exhibit 1, Item 10, *FAA Form 5010* and Item 6A, *Respondent's Answer*, .Memorandum of Points, page 5.

operators,[3] an avionics maintenance facility, an aircraft manufacturer, a helicopter refurbishing facility, two flights schools and an aircraft maintenance school.[4]

The Shreveport Downtown Airport was deeded to the City of Shreveport in 1949 by the United States, through the War Assets Administrator, pursuant to Reorganization Plan 1 of 1947 (12 F.R. 4534) and the powers and authority of the Surplus Property Act of 1944, as amended.[5] Consequently, the City of Shreveport has nondiscrimination obligations pursuant to Title VI, Civil Rights Act and obligations to comply with statutory exclusive rights prohibition under an expired AP-4 agreement.

In addition, the planning and development of the Shreveport Downtown Airport has been financed, in part, with funds provided by the FAA under the Airport Improvement Program (AIP), authorized by 49 U.S.C. § 47101, et seq. The Shreveport Airport Authority has entered into numerous AIP grant agreements with the FAA since 1982. The Respondent has received a total of $6,044,867 through fiscal year 2001 in Federal airport development assistance directly from the FAA for the Shreveport Airport Authority.[6]

III. BACKGROUND

This section includes a *brief* description of the relevant airport tenants and their lease agreements with the Respondent, the revision and adoption of new airport minimum standards, a related state lawsuit, and the procedural history for document filings in this Part 16 formal Complaint. The chronology of events pertaining to each specific allegation in this Complainant is included in the analysis section (Section VI) of this determination.

(A) Lease Agreements with Commercial Operators

Complainant is currently a fixed-base operator at the Airport authorized to provide all associated commercial services, including fuel and oil sales, aircraft maintenance, and aircraft storage.

In May 1998,[7] prior to the Complainant's establishment of its own fixed-base operation, the Respondent authorized the Complainant's competitor, Air One, to begin offering

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[3] A fixed-base operator is a commercial entity, providing aeronautical services, such as maintenance, storage, ground and flight instruction, etc. to the public. [FAA Order 5190.6A, Airport Compliance Requirements, Appendix 5.] One of the fixed-base operators has subsequently ceased providing services at the Shreveport Downtown Airport.

[4] *See* FAA Exhibit 1, Item 6A*, Respondent's Answer*, "Memorandum of Points," page 6.

[5] *See* FAA Exhibit 1, Item 2, *Complaint*, page 9, and Item 6A, *Respondent's Answer*, "Memorandum of Points," page 4.

[6] *See* FAA Exhibit 1, Item 11, *FAA Grant History*.

[7] Record evidence shows dates of both April 1998 and May 1998. [*See* FAA Exhibit 1, Item 6A, *Respondent's Answer,* "Memorandum of Points," page 6; and Item 6, *Respondent's Answer*, exhibit 1-A, page FAA2059/SAA5773.]

services as a fixed-base operator. This initial approval was temporary with final authorization contingent upon the competitor's full compliance with applicable minimum standards. In July 1999, the Respondent determined the competitor was in compliance with the airport's minimum standards and entered into a fixed-base operator lease agreement with it. This agreement is effective from May 1, 1999, to April 30, 2004, with options to renew for two (2) successive five-year periods.[8] Subsequent to the initiation of this Complaint, and prior to a determination in this matter, this competing fixed-base operator stopped providing aeronautical services as a fixed-base operator at the Shreveport Downtown Airport.[9]

In September 1999, the Respondent entered into a similar fixed-base operator lease agreement with the Complainant. This agreement is effective from September 1, 1999, to August 31, 2004, with options to renew for two (2) successive five-year periods.[10] The Respondent granted the Complainant six months from September 1999 to comply fully with the airport's minimum standards or risk termination of the lease agreement.[11]

In May 2000, the Respondent entered into a lease agreement with another airport tenant, Judice Aviation,[12] authorizing it to use several offices for a flight training business. In January 2001, the Respondent leased several shade ports[13] to Judice Aviation as well. In March 2002, the Respondent and Judice Aviation entered into a new lease agreement expanding Judice Aviation's leased area.[14] Subsequent to the initiation of this Complaint, and prior to a determination in this matter, Judice Aviation stopped providing aeronautical service at the Shreveport Downtown Airport.[15]

On December 1, 2002, subsequent to the filing of this Part 16 Complaint, Pronto Delivery Service, Inc. entered into a lease agreement with the Respondent.[16] Complainant states that Pronto Delivery Service, Inc. has been operating as a commercial flight school and commercial aircraft rental operator since early 2003.[17] Respondent states that Pronto Delivery Service, Inc. is a cargo operator that also provides flight training services at the airport. The aircraft used for flight training are owned by Pronto Aviation, Inc. [18]

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[8] *See* FAA Exhibit 1, Item 6A, *Respondent's Answer, "*Memorandum of Points," exhibit 1-B.
[9] *See* FAA Exhibit 1, Item 17, *Respondent's Reply to Complainant's Motion to Supplement Record*, pages 2-3.
[10] *See* FAA Exhibit 1, Item 2, *Complaint*, Tab 2, page FAA1135.
[11] *See* FAA Exhibit 1, Item 2, *Complaint*, Tab 2, pages FAA1156 and FAA1157.
[12] Judice Aviation is not a fixed-base operator and does not offer the full range of services of a fixed-base operator. However, Judice Aviation does offer some services that overlap and compete with the services offered by the fixed-base operators on the airport.
[13] The lease agreement indicates the shade ports may be used to park aircraft but may not be used for any commercial activity. [*See* FAA Exhibit 1, Item 6, *Respondent's Answer*, exhibit 1-I.]
[14] *See* FAA Exhibit 1, Item 6A, *Respondent's Answer*, "Memorandum of Points," exhibits 1-F and 1-H; FAA Exhibit 1, Item 2, *Complaint*, Tab 2, pages FAA1074, FAA1095, and FAA1102.
[15] *See* FAA Exhibit 1, Item 17, *Respondent's Reply to Complainant's Motion to Supplement Record*, page 2.
[16] FAA Exhibit 1, Item 16, *Motion to Supplement Record*, page 19/SAA8720.
[17] *See* FAA Exhibit 1, Item 16, *Motion to Supplement Record*.
[18] FAA Exhibit 1, Item 17, *Respondent's Reply to Complainant's Motion to Supplement Record*, page 4.

Both the Complainant and Pronto Delivery Service, Inc. continue to operate at Shreveport Downtown Airport. Air One and Judice Aviation, however, have ceased offering services to the public at the airport.

(B) Airport Minimum Standards

The Respondent is the owner, operator, and sponsor of two airports: the Shreveport Regional Airport, and the Shreveport Downtown Airport. In August 1985, the Respondent adopted minimum standards – referred to throughout this report as the 1985 *General Aviation Standards* – that were applicable to both airports. The 1985 *General Aviation Standards* have been periodically revised and updated.

In 1994, the Respondent commissioned the Center for Airport Management to conduct a study of the Shreveport Downtown Airport, including the application of its 1985 *General Aviation Standards*.[19]

Following this study, the Respondent developed new minimum standards specific to the Shreveport Downtown Airport. These new standards became effective in 1999 and are referred to throughout this report as the 1999 *Minimum Aviation Standards*. The 1999 *Minimum Aviation Standards* were based on the earlier 1985 *General Aviation Standards*, but included changes that affected airport tenants, including the Complainant.

Since the adoption of the 1999 *Minimum Aviation Standards*, airport tenants at the Shreveport Downtown Airport, including the Complainant and its fixed-base operator competitor, have lodged complaints with the Respondent alleging competitor noncompliance with the *Minimum Aviation Standards*. Complainant and its competing fixed-base operator have also lodged complaints with the FAA regional office alleging unequal enforcement of the 1999 *Minimum Aviation Standards* among airport tenants by the Respondent. The Complainant filed this formal Part 16 complaint with the FAA May 31, 2002.

(C) State Lawsuit

In August 2001, prior to filing this formal Part 16 complaint, the Complainant filed a lawsuit against the Respondent. In that lawsuit, Complainant requested that the Louisiana state court require the Respondent to terminate Respondent's lease agreements with Complainant's competing fixed-base operator and its competing tenant Judice Aviation. In addition, Complainant asked the court to ban other commercial entities from the Shreveport Downtown Airport. [20]

(D) Procedural History

[19] *See* FAA Exhibit 1, Item 6A, *Respondent's Answer*, "Memorandum of Points," page 7 and exhibit 2-B.
[20] *See* FAA Exhibit 1, Item 6A, *Respondent's Answer*, "Memorandum of Points, pages 3-4, and exhibit 4-F. The Complainant provided copies of depositions from this lawsuit, which had not come to trial at the time of this filing. [*See* FAA Exhibit 1, Item 2, *Complaint*, tabs 5-10.]

On May 31, 2002, the FAA received Complainant's formal Part 16 Complaint alleging Respondent's violation of its Federal grant assurances regarding assurance 22, *Economic Nondiscrimination*, and assurance 23, *Exclusive Rights*.

On August 23, 2002, the FAA received the Respondent's Answer. The Respondent denied that it violated its grant assurances and filed a motion to dismiss. Specifically, the Respondent requested that the FAA dismiss the complaint on the following points:

- Allegations contained in the Complaint, even if true, do not constitute a legal claim that [Respondent] has violated its grant assurances;
- Documents submitted with the Complaint and those attached to this pleading demonstrate that [Respondent] is interpreting and enforcing the [1999 *Minimum Aviation Standards*] reasonably; and
- Complainant is abusing the Part 16 process in a transparent effort to drive its competitors out of business.[21]

On September 11, 2002, the FAA received the Complainant's Reply to Respondent's Answer. The Complainant restates its position that the Respondent is unfairly enforcing its 1999 *Minimum Aviation Standards* at the Shreveport Downtown Airport by requiring Complainant to comply strictly with the minimum standards while allowing its competitors flexibility in meeting these same standards. Complainant states it is using the Part 16 process and state court proceedings only to "establish a level playing field" and not to stifle competition among aeronautical users.[22]

On September 19, 2002, the FAA received the Respondent's Rebuttal. The Respondent states in rebuttal that Complainant's Reply does not add material information in support of its complaint. Respondent states that the additional documentation and information provided does not contradict the Respondent's position that it has not violated its Federal requirements regarding economic nondiscrimination and exclusive rights. Respondent asks the FAA to dismiss the complaint.[23]

On August 27, 2003, the FAA received Complainant's Motion to Supplement Record naming an additional airport tenant allegedly receiving preferential treatment under the 1999 *Minimum Aviation Standards*.[24]

On October 8, 2003, the FAA received Respondent's Reply to Complainant's Motion to Supplement Record noting that two aeronautical users identified in the initial complaint have ceased operations at the airport, and denying allegations of preferential treatment for the new tenant.[25]

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[21] *See* FAA Exhibit 1, Item 6A, *Respondent's Answer*, "Memorandum of Points," pages 2-3.
[22] *See* FAA Exhibit 1, Item 8, *Complainant's Reply to Respondent's Answer*.
[23] *See* FAA Exhibit 1, Item 9, *Respondent's Rebuttal.*
[24] *See* FAA Exhibit 1, Item 16, *Motion to Supplement Record.*
[25] See FAA Exhibit 1, Item 17, *Respondent's Reply to Complainant's Motion to Supplement Record*.

On October 15, 2003, the Director of Airport Safety and Standards issued an Order granting the Motion to Supplement the Record.[26]

IV. ISSUES

Upon review of the allegations and the relevant airport-specific circumstances, summarized above in the background section (Section III), the FAA has determined that the following issues, identified under three broad categories, require analysis in order to provide a complete review of the Respondent's compliance with applicable Federal law and policy:

(A) Establishing a Commercial Fueling Facility:

Issue 1: Whether the Shreveport Airport Authority impeded Complainant's attempts to establish a commercial self-service fueling facility at the Shreveport Downtown Airport through deliberate delays, withdrawn approvals, and denied access in violation of grant assurances 22, *Economic Nondiscrimination*, and 23, *Exclusive Rights*.

(B) Enforcement of Minimum Standards:

Issue 2: Whether Respondent failed to enforce its minimum standards consistently among all tenants at the Shreveport Downtown Airport in violation of grant assurance 22, *Economic Nondiscrimination*.

(C) Collection of Rents and Fees:

Issue 3: Whether the Respondent permitted some aeronautical tenants to operate on the airport without paying appropriate rents and fees while requiring Complainant to pay such rents and fees in violation of grant assurance 22, *Economic Nondiscrimination*.

In addition to these three issues, the Director addresses the following preliminary issues: (1) Respondent's Motion to Dismiss and Affirmative Defenses, (2) Respondent's Motion to Dismiss as Moot, and (3) Complainant's Request for a Hearing.

The Director's determination in this matter is based on the applicable Federal law and FAA policy, review of the arguments and supporting documentation submitted by the parties, and the administrative record reflected in the attached FAA Exhibit 1.[27]

[26] See FAA Exhibit 1, Item 18, *Order.*
[27] FAA Exhibit 1 provides the Index of Administrative Record in this proceeding.

V. APPLICABLE FEDERAL LAW AND FAA POLICY

The following is a discussion pertaining to the FAA's enforcement responsibilities; the FAA compliance program; statutes, sponsor assurances, and relevant polices; and the appeal process.

(A) FAA Enforcement Responsibilities

The Federal Aviation Act of 1958, as amended, 49 U.S.C. § 40101, et seq., assigns the FAA Administrator broad responsibilities for the regulation of air commerce in the interests of safety, security, and development of civil aeronautics. Various legislative actions augment the Federal role in encouraging and developing civil aviation. These actions authorize programs for providing funds and other assistance to local communities for the development of airport facilities. In each such program, the airport sponsor assumes certain obligations, either by contract or by restrictive covenants in property deeds and conveyance instruments, to maintain and operate its airport facilities safely, efficiently, and in accordance with specified conditions. Commitments assumed by airport sponsors in property conveyance or grant agreements are important factors in maintaining a high degree of safety and efficiency in airport design, construction, operation and maintenance as well as ensuring the public reasonable access to the airport. Pursuant to 49 U.S.C. § 47122, the FAA has a statutory mandate to ensure that airport owners comply with their sponsor assurances.

(B) FAA Airport Compliance Program

The FAA discharges its responsibility for ensuring that airport sponsors comply with their Federal obligations through its Airport Compliance Program. Sponsor obligations are the basis for the FAA's airport compliance effort. The airport owner accepts these obligations when receiving Federal grant funds or when accepting the transfer of Federal property for airport purposes. The FAA incorporates these obligations in grant agreements and instruments of conveyance to protect the public's interest in civil aviation and to ensure compliance with Federal laws.

The FAA designed the Airport Compliance Program to ensure the availability of a national system of safe and properly maintained public-use airports which airport sponsors operate in a manner consistent with their Federal obligations and the public's interest in civil aviation. The Airport Compliance Program does not control or direct the operation of airports. Rather, it monitors the administration of valuable rights to ensure that airport sponsors serve the public interest. Airport sponsors pledge valuable rights to the people of the United States in exchange for monetary grants and donations of Federal property.

FAA Order 5190.6A, Airport Compliance Requirements (Order), sets forth policies and procedures for the FAA Airport Compliance Program. The Order is not regulatory and is not controlling with regard to airport sponsor conduct; rather, it establishes the policies and procedures for FAA personnel to follow in carrying out the FAA's responsibilities

for ensuring airport compliance. It provides basic guidance for FAA personnel in interpreting and administering the various continuing commitments airport owners make to the United States as a condition for the grant of Federal funds or the conveyance of Federal property for airport purposes. The Order analyzes the various obligations set forth in the standard airport sponsor assurances, addresses the application of the assurances in the operation of public-use airports, and facilitates interpretation of the assurances by FAA personnel.

The FAA Compliance Program is designed to achieve voluntary compliance with federal obligations accepted by owners and/or operators of public-use airports developed with FAA-administered assistance. In addressing allegations of noncompliance, the FAA will determine whether an airport sponsor is *currently* in compliance with applicable federal obligations. Consequently, the FAA will consider as grounds for dismissal of such allegations the successful action by the airport sponsor to cure any alleged or potential past violation of applicable federal obligations subsequent to receiving the complaint and prior to issuing a final decision and order. [See e.g. Wilson Air Center v. Memphis and Shelby County Airport Authority, FAA Docket No. 16-99-10, p. 17 (8/30/01) and Roberts v. Daviess County Board of Aviation Commissioners, FAA Docket No. 16-00-06, pgs. 15-16 (12/13/01)]

(C) Statutes, Sponsor Assurances, and Relevant Policies

As a condition precedent to providing airport development assistance under the Airport and Airway Improvement Act of 1982 (AAIA), the Secretary of Transportation receives certain assurances from the airport sponsor.

The AAIA, 49 U.S.C. § 47107(a), et seq., sets forth assurances to which an airport sponsor receiving Federal financial assistance must agree as a condition precedent to receipt of such assistance. Pursuant to 49 U.S.C. § 47107(g)(1), the Secretary is authorized to prescribe project sponsorship requirements to ensure compliance with 49 U.S.C. § 47107(a)(1)(2)(3)(5)(6). These sponsorship requirements are included in every AIP agreement as set forth in FAA Order 5100.38B, Airport Improvement Program Handbook.[28] Upon acceptance of an AIP grant by an airport sponsor, the assurances become a binding contractual obligation between the airport sponsor and the Federal government.

Two assurances are relevant to this complaint: (1) grant assurance 22, *Economic Nondiscrimination*, and (2) grant assurance 23, *Exclusive Rights*. In addition, while not a distinctly separate grant assurance, FAA policies concerning minimum standards are incorporated by implication into a number of grant assurances and are relevant to this Complaint.

[28] *See* FAA Order 5100.38B, *Airport Improvement Program Handbook*, Chapter 10, "Project Formulation, Requests for Aid and Letters of Intent," paragraph 1020, *General Certification Requirements*.

(1) Economic Nondiscrimination

Grant Assurance 22, *Economic Nondiscrimination*, of the prescribed sponsor assurances implements the provisions of 49 U.S.C. § 47107(a)(1) through (6), and requires, in pertinent part, that the sponsor of a federally obligated airport

> will make its airport available for public use on reasonable terms, and without unjust discrimination, to all types, kinds, and classes of aeronautical activities. [Assurance 22(a)]
>
> may establish such reasonable, and not unjustly discriminatory, conditions to be met by all users of the airport as may be necessary for the safe and efficient operation of the airport. [Assurance 22(h)]
>
> may prohibit or limit any given type, kind, or class of aeronautical use of the airport if such action is necessary for the safe operation of the airport or is necessary to serve the civil aviation needs of the public. [Assurance 22(i)]

Subsection (h) qualifies subsection (a); subsection (i) represents an exception to subsection (a). The intent is to permit the sponsor sufficient control over the airport to preclude unsafe and inefficient conditions, which would be detrimental to the civil aviation needs of the public.

FAA Order 5190.6A describes the responsibilities under grant assurance 22 assumed by the owners of public-use airports developed with Federal assistance. Among these is the obligation to treat in a uniform manner those users making the same or similar use of the airport and to make all airport facilities and services available on reasonable terms without unjust discrimination.[29]

The FAA considers it inappropriate to provide Federal assistance for improvements to airports where the benefits of such improvements will not be fully realized due to inherent restrictions on aeronautical activities.[30]

The owner of any airport developed with Federal grant assistance is required to operate the airport for the use and benefit of the public and to make it available to all types, kinds and classes of aeronautical activity on fair and reasonable terms, and without unjust discrimination.[31]

(2) Exclusive Rights

Title 49 U.S.C. § 40103(e) provides, in relevant part, that "[a] person does not have an exclusive right to use an air navigation facility on which Government money has been

[29] *See* FAA Order 5190.6A, Airport Compliance Requirements, Secs. 3-1 and 4-14(a)(2).
[30] *See* FAA Order 5190.6A, Airport Compliance Requirements, Sec. 3-8(a).
[31] *See* FAA Order 5190.6A, Airport Compliance Requirements, Sec. 4-13(a).

expended." In accordance with 49 U.S.C. § 40102(a)(4), (9), (28), an "air navigation facility" includes an "airport."

Title 49 U.S.C. § 47107(a)(4) similarly provides, in pertinent part, that "a person providing, or intending to provide, aeronautical services to the public will not be given an exclusive right to use the airport…"

Grant assurance 23, *Exclusive Rights*, of the prescribed sponsor assurances implements the provisions of 49 U.S.C. §§ 40103(e) and 47107(a)(4), and requires, in pertinent part, that the sponsor of a federally obligated airport "…will permit no exclusive right for the use of the airport by any persons providing, or intending to provide, aeronautical services to the public." The sponsor further agrees that it "will not, either directly or indirectly, grant or permit any person, firm, or corporation, the exclusive right at the airport to conduct any aeronautical activities…"

In FAA Order 5190.1A, Exclusive Rights, the FAA published its exclusive rights policy and broadly identified aeronautical activities as subject to the statutory prohibition against exclusive rights. While public-use airports may impose qualifications and minimum standards upon those who engage in aeronautical activities, the FAA has taken the position that the application of any unreasonable requirement or standard that is applied in an unjustly discriminatory manner may constitute a constructive grant of an exclusive right. Courts have found the grant of an exclusive right where a significant burden has been placed on one competitor that is not placed on another. [See e.g. Pompano Beach v FAA, 774 F.2d 1529 (11th Cir, 1985)]

FAA Order 5190.6A provides additional guidance on the application of the statutory prohibition against exclusive rights and FAA policy regarding exclusive rights at public-use airports.[32]

(3) Minimum Standards

FAA Order 5190.6A describes the responsibilities under the grant assurances assumed by owners of public-use airports developed with Federal assistance. Among these is the responsibility for enforcing adequate rules, regulation, or ordinances as are necessary to ensure the safe and efficient operation of the airport.[33]

Grant assurance 19, *Operations and Maintenance*, requires the airport sponsor to ensure the airport and all facilities necessary to serve the aeronautical users of the airport are operated at all times in a safe and serviceable condition and in accordance with the minimum standards as may be required or prescribed by applicable Federal, state, and local agencies for maintenance and operation.

The FAA encourages airport management, as a matter of prudence, to establish minimum standards to be met by all who would engage in a commercial aeronautical activity at the

[32] *See* FAA Order 5190.6A, Airport Compliance Requirements, Chapter 3.
[33] *See* FAA Order 5190.6A, Airport compliance Requirements, Secs. 4-7 and 4-8.

airport. It is the prerogative of the airport owner to impose conditions on users of the airport to ensure its safe and efficient operation. Such conditions must, however, be reasonable and not unjustly discriminatory. They must be relevant to the proposed activity, reasonably attainable, and uniformly applied.[34]

The FAA ordinarily makes an official determination regarding the relevance and/or reasonableness of the minimum standards only when the effect of a standard denies an aeronautical activity access to a public-use airport. Such determinations often include consideration of whether failure to meet the qualifications of the standards is a reasonable basis for denial and whether the application of the standard results in an attempt to create an exclusive right.[35]

The airport owner may quite properly increase the minimum standards from time to time in order to ensure a higher quality of service to the airport users. Manipulating the standards solely to protect the interest of an existing tenant, however, is unacceptable.[36]

FAA Advisory Circular 150/5190-5, Exclusive Rights and Minimum Standards for Commercial Aeronautical Activities, June 10, 2002, discusses FAA policy regarding the development and enforcement of airport minimum standards.

VI. ANALYSIS

Complainant alleges the Respondent placed it in an unfair economic position and conveyed an exclusive right to Complainant's competing fixed-base operator by preventing the Complainant from establishing its own commercial self-service fueling operation under the same conditions as its competitor. In addition, Complainant alleges it continued to be kept at an economic disadvantage through the Respondent's inconsistent enforcement of its 1999 *Minimum Aviation Standards* and through the Respondent's failure to collect appropriate rents and fees from competing tenants on the airport.

The issues to be resolved are addressed below under three broad categories:

- Establishing a Commercial Fueling Facility:
  Issue 1: Whether the Shreveport Airport Authority impeded Complainant's attempts to establish a commercial self-service fueling facility at the Shreveport Downtown Airport through deliberate delays, withdrawn approvals, and denied access in violation of grant assurances 22, *Economic Nondiscrimination*, and 23, *Exclusive Rights*.

- Enforcement of Minimum Standards:

[34] *See* FAA Order 5190.6A, Airport Compliance Requirements, Sec. 3- 12.
[35] *See* FAA Order 5190.6A, Airport Compliance Requirements, Sec. 3-17(b).
[36] *See* FAA Order 5190.6A, Airport Compliance Requirements, Sec. 3-17(c).

Issue 2: Whether Respondent failed to enforce its minimum standards consistently among all tenants at the Shreveport Downtown Airport in violation of grant assurance 22, *Economic Nondiscrimination*.

- Collection of Rents and Fees:
  Issue 3: Whether the Respondent permitted some aeronautical tenants to operate on the airport without paying appropriate rents and fees while requiring Complainant to pay such rents and fees in violation of grant assurance 22, *Economic Nondiscrimination*.

In addition to these three issues, the Director addresses the following preliminary issues: (1) Respondent's Motion to Dismiss and Affirmative Defenses, (2) Respondent's Motion to Dismiss as Moot, and (3) Complainant's Request for a Hearing.

(A) Preliminary Issues

(1) Respondent's Motion to Dismiss and Affirmative Defenses

The Respondent filed a Motion to Dismiss pursuant to 14 CFR § 16.23(j) alleging the "complaint should be dismissed because the facts alleged, even if true, do not state a legal claim and alternatively, because the facts and evidence presented plainly reveal that Respondent's interpretation and enforcement of its Minimum Standards is reasonable."[37]

The Respondent raised three affirmative defenses in its Answer, including Respondent's allegation that the Complainant failed to state a claim that warrants an investigation or further action by the FAA. The two other affirmative defenses allege that the Complainant is not directly and substantially affected by any alleged noncompliance and therefore lacks standing to bring its claims, and the Complainant is barred from maintaining this action for failure to complete good faith efforts to resolve the disputed matters informally.[38]

(a) Failure to State a Claim

The Respondent alleges that the Complaint fails to state a claim because it is devoid of any allegation that Complainant has been expressly or constructively excluded from accessing or providing any aeronautical service at Shreveport Downtown Airport. In addition, the Respondent alleges that the Complaint fails to state a claim because it does not establish that Complainant is unable to compete with similarly situated aeronautical users at Shreveport Downtown Airport. The Respondent also contends that the facts and evidence presented plainly reveal that Respondent's interpretation and enforcement of its Minimum Standards is reasonable.

[37] FAA Exhibit 1, Item 6B, *Motion to Dismiss*
[38] FAA Exhibit 1, Item 6, *Respondent's Answer*

Contrary to the Respondent's assertion, the Director finds that the Complainant does state a claim that warrants an investigation, including the need to investigate whether Respondent' interpretation and enforcement of its Minimum Standards is reasonable. Accordingly, the Motion to Dismiss for failure to state a claim is denied.

(b) Standing

The Respondent alleges that the Complainant lacks standing to bring this Part 16 claim. The Part 16 Rules of Practice for Federally-Assisted Airport Enforcement Proceedings permit persons directly and substantially affected by any alleged noncompliance to file a complaint with the Administrator. The applicable section, 14 CFR Part 16 § 16.23(a), states:

> A person directly and substantially affected by any alleged noncompliance may file a complaint with the Administrator. A person doing business with an airport and paying fees or rentals to the airport shall be considered directly and substantially affected by alleged revenue diversion as defined in 49 U.S.C. 47107(b).

Thus a complainant presently engaged in a business arrangement with an airport may suffer from a direct and substantial effect. Complainants under § 16.23(b)(4) are required to describe how they were directly and substantially affected by the things done or omitted to be done by the respondents. The fact that the Complainant is currently paying fees or rentals to the Respondent demonstrates that he is directly and substantially affected by any alleged noncompliance. The Complainant met the requirement of § 16.23(b)(4) by providing a brief description of how it was affected by the alleged noncompliance. The Complainant asserts that it is directly and substantially affected by (a) having made a major capital investment in operations at the Shreveport Downtown Airport, (b) then having the Respondent apply its minimum standards in an unequal manner, which has effectively resulted in an unfair competitive position, and (c) having the Respondent refuse to allow the Complainant to conduct commercial self-service fueling operations.[39]

After a review of the record, the Director considers that the Complainant did provide the FAA with a description of how he was directly and substantially affected by the things done, or omitted to be done, by the Respondent. The Complainant, as a person directly and substantially affected by the alleged noncompliance by the Respondent, has standing to file a complaint under Part 16.

(c) Pre-complaint Resolution

The Respondent argues that the Complainant is barred from maintaining this action for failure to complete good faith efforts to resolve the disputed matters informally. Pre-complaint resolution is required prior to filing a Part 16 complaint pursuant to 14 CFR § 16.21(a).

[39] FAA Exhibit 1, Item 8, *Complainant's Reply to Respondent's Answer,* and Item 2, *Complaint.*

The Complainant states that both he and his attorney made substantial and good faith efforts to resolve the matter prior to filing the complaint. The Complainant asserts that his efforts consisted of numerous meetings and discussions with the managers of the airport. The Complainant's attorney sent correspondence and appeared at meetings of the Shreveport Airport Authority in 2001. A committee was established by the Respondent to review the matters raised. The Complainant's attorney continued to send correspondence to the Respondent in 2002 raising issues of the Respondent's airport compliance. In May 2002, Complainant filed an amended petition for mandamus in a state court alleging some of the same issues against the Respondent.[40]

The Complainant declared and certified that pursuant to 14 CFR § 16.21, he made substantial and reasonable good faith efforts to resolve this dispute informally and that there appeared to be no reasonable prospect for timely resolution.[41]

Part 16 § 16.21(a) states that a potential complainant "shall initiate and engage in good faith efforts to resolve the disputed matter informally with those individuals or entities believed responsible for the noncompliance." Part 16 § 16.21(b) requires the Complainant to certify that substantial and reasonable good faith efforts to resolve the disputed matter informally prior to filing the complaint were made and that there appears no reasonable prospect for timely resolution of the dispute. The section goes on to state, "this certification shall include a brief description of the party's efforts to obtain informal resolution…" The *Rules of Practice for Federally-Assisted Airport Proceedings*, Final Rule, 61 Fed. Reg. 53998 (Oct. 16, 1996) states that the parties may ask the local FAA Airports District Office to assist them in resolving the dispute informally, but it does not require such action by either party. This final rule does not require any particular informal resolution method. Additionally, Part 16, Subpart C, *Special Rules Applicable to Complaints*, does not state that efforts to resolve an issue must begin or conclude at any given point.

The Director also finds, based on record evidence that the Complainant engaged in pre-complaint resolution. In addition, the Complainant declares and certifies in the Complaint that he made substantial and reasonable good faith efforts to resolve this dispute informally and that there appeared to be no reasonable prospect for timely resolution.

The Director is persuaded that the Complainant met the requirements of Part 16 § 16.21.

(2) Motion to Dismiss as Moot

The Respondent alleges in its *Reply to Complainant's Motion to Supplement Record* that the complaint should be dismissed as moot.[42]

[40] *See* FAA Exhibit 1, Item 6, *Respondent's Answer,* Exhibit 4-F.
[41] *See* FAA Exhibit 1, Item 1, Certificate of Attempts at Pre-complaint Resolution
[42] FAA Exhibit 1, Item 17, *Respondent's Reply to Complainant's Motion to Supplement*

The Respondent alleges in its *Reply to Complainant's Motion to Supplement Record* that the subjects of the initial complaint, Complainant's competitors Air One and Judice Aviation, no longer provide aeronautical services at the Shreveport Downtown Airport. The Respondent asserts that the premise of the initial complaint, that the Respondent is violating its grant assurance obligations by permitting Air One and Judice Aviation to operate in violation of the minimum standards cannot be substantiated. The Respondent contends that the complaint should be dismissed as moot.[43]

This proceeding concerns whether or not a sponsor, by action or inaction, is complying with its Federal obligations. The focus is on current compliance, but a necessary part of current compliance is a sponsor's actions in carrying out its federal obligations. The Respondent's former actions, as well as current actions, shape its airport compliance efforts regardless of subsequent developments in tenancy at the airport. The typical standard for a claim of mootness is whether a matter is capable of repetition, but evading review.[44] Under this premise, the Director cannot find that the complaint is moot.

Accordingly, the Motion to Dismiss on these grounds is dismissed.

(3) Complainant's Request for a Hearing

The Complainant prays, inter alia, that a hearing on this matter will be conducted.[45]

The FAA Rule of Practice, 14 CFR Part 16, do not provide for an evidentiary hearing during an investigation or prior to the Director's Determination. A hearing is provided if the Director's Determination finds the respondent in noncompliance and proposes to issue a compliance order directing the withholding of an application for amounts apportioned under 49 U.S.C. § 47114(c) and (e), the latter of which has not occurred in this case.[46]

The FAA Rules of Practice, 14 CFR Part 16, apply the procedural structure of 49 U.S.C. § 46101(a) to complaints filed with the FAA against federally-assisted airports. The Courts of Appeals that have examined the issue have held that the Part 16 hearing rules are consistent with 49 U.S.C. § 46101(a).[47]

If it appears from the pleadings that there is a reasonable basis for "further investigation," the FAA will continue its investigation by conducting a careful "review of the written submissions or pleadings of the parties."[48] In the FAA's "sole discretion," the FAA may supplement its investigation based on the pleadings by requesting additional information from the parties or by conducting any other informal investigation it considers

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[43] FAA Exhibit 1, Item 17, *Respondent's Reply to Complainant's Motion to Supplement Record*
[44] This doctrine requires that "there was a reasonable expectation that the same complaining part would be subjected to the same action again". Weinstein v. Bradford, 423 US 147, 149 (1975), holding that the case was not moot because there was a reasonable expectation that the challenged conduct would recur.
[45] FAA Exhibit 1, Item 2, *Complaint*
[46] *See* 14 CFR § 16.31(d).
[47] *See* e.g., Penobscot Air Services LTD v. FAA, 164 F.3d, 713, 720 (1st Cir. 1999) and Lange v. FAA, 208 F.3d 389, 391 (2nd Cir. 2000).
[48] *See* 14 CFR § 16.29(a), (b)(1).

necessary.[49] The Director may "rely entirely" on the party's pleadings and supporting documentation in rendering the FAA's initial decision.[50]

Accordingly, there is no right to a hearing in this proceeding and the request is denied.

(B) Establishing a Commercial Fueling Facility

Issue 1: Whether the Shreveport Airport Authority impeded Complainant's attempts to establish a commercial self-service fueling facility at the Shreveport Downtown Airport through deliberate delays, withdrawn approvals, and denied access in violation of grant assurances 22, *Economic Nondiscrimination*, and 23, *Exclusive Rights*.

The allegations regarding Complainant's efforts to establish a commercial self-service fueling facility are discussed in three sections:

- Whether Respondent unjustly delayed approval for Complainant to establish a commercial self-service fueling facility in violation of grant assurance 22, *Economic Nondiscrimination*, and grant assurance 23, *Exclusive Rights*.

- Whether Respondent first consented to, and then withdrew approval for, Complainant to establish a commercial self-service fueling facility in violation of grant assurance 22, *Economic Nondiscrimination*; and

- Whether Respondent denied Complainant the opportunity to sell fuel in competition with another fixed-base operator on the airport in a violation of grant assurance 23, *Exclusive Rights*.

(1) Delayed Approval to Establish Commercial Self-Service Fueling Facility

Complainant alleges Respondent unjustly delayed approval of Complainant's request to install and operate a commercial self-service fueling facility. Complainant alleges Respondent forced this delay so it could increase the airport's minimum standards. By doing so, Complainant alleges Respondent created an economic disadvantage to the Complainant in violation of grant assurance 22, *Economic Nondiscrimination*, and provided an exclusive right to Complainant's competing fixed-base operator in violation of grant assurance 23, *Exclusive Rights*.

The Complainant requested approval to sell fuel as part of its fixed-base operation on May 13, 1999.[51] Complainant alleges Respondent deliberately delayed approval of its commercial self-service fueling facility in order to establish minimum standards that were more restrictive than the standards in place at the time of Complainant's initial request.

[49] *See* 14 CFR 16.29(b)(1).
[50] *See* 14 CFR §§16.29 (b)(1), 16.31(a); cf. 49 U.S.C. 46101(a)(3).
[51] *See* FAA Exhibit 1, Item 2, *Complaint*, tab 2, page FAA1108 / SAA5095.

The record confirms that the Shreveport Airport Authority did delay approval of Complainant's request pending the revision of its applicable minimum standards. The record also confirms that the new standards imposed more restrictions regarding the placement of new fuel tanks on the airport.

Delayed Approval. Respondent postponed discussion regarding Complainant's May 13, 1999, request to sell aviation fuel at the Shreveport Airport Authority's May and June 1999 board meetings. The record shows that discussion regarding a similar request by another operator was also postponed at the same meetings.[52] Complainant was not permitted to establish its commercial self-service fueling operation during the time the Respondent worked to develop and adopt its new 1999 *Minimum Aviation Standards.* Those standards became effective September 1, 1999 – the same effective date as the Complainant's lease agreement with the Respondent.

Increased Standards. The minimum standards for fixed-base operator fueling operations were revised between the date of Complainant's initial request to sell fuel and the effective date of the new standards. The new standards incorporated additional requirements, which impacted the Complainant's operation. Specifically, the Complainant's initial request included installing at least one new fuel tank on the airport, but outside of the airport's fuel farm. This was not in violation of the standards in place at the time of Complainant's initial request. However, by the effective date of Complainant's lease agreement with the Respondent, the new 1999 *Minimum Aviation Standards* were in effect and required new fuel tanks to be installed inside the airport's fuel farm only. [53]

The Director is persuaded that the Respondent delayed action on Complainant's request to establish a commercial self-service fueling operation. The Director is also persuaded that the Respondent increased the minimum standards regarding the installation of new fuel tanks *after* the Complainant first requested approval to establish said operation. The Director is not persuaded, however, that this delay, or the resulting increase in applicable minimum standards, was unreasonable or discriminatory.

The FAA encourages airport sponsors to establish reasonable minimum standards that are relevant to the proposed aeronautical activity with the goal of protecting the level and quality of services offered to the public. Minimum standards can be modified to reflect the airport's desire to learn from experience and to be watchful for improvements in the way it does business in order to protect the public interest.

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[52] Meeting minutes from both the May 20, 1999, and June 17, 1999, meetings indicate the discussion would be delayed. The other operator whose request was delayed was Steen Aviation, Inc, requesting to sell aviation fuel at Shreveport Regional Airport. [*See* FAA Exhibit 1, Item 8, *Complainant's Reply to Respondent's Answer*, pages SAA5373 and SAA5381.]

[53] The July 1, 1999, standards required all self-serve fuel facilities to have above-ground storage tanks. [*See* FAA Exhibit 1, Item 2, *Complaint*, tab 12, exhibit A, page 33 (FAA1627)]. The revised standards adopted August 24, 1999, added a requirement to offer a minimum of two grades of fuel, and required fuel tanks to be located in the airport's consolidated fuel farm. [*See* FAA Exhibit 1, Item 2, *Complaint*, tab 12, exhibit B, page 10 (FAA1641).]

Depending on the airport-specific circumstances, it is neither unreasonable nor unjustly discriminatory for an airport sponsor to suspend approval of new aeronautical activities while the standards for those activities are under revision. In this case, the delay of less than four months – from May 13, 1999, when Complainant requested approval to establish its commercial self-service fueling operation, until September 1, 1999, when the new 1999 *Minimum Aviation Standards* became effective – is not unreasonable. In addition, the evidence shows the Respondent acted consistently with regard to similar requests from other aeronautical tenants as well.[54]

It is true that this four-month delay may have provided an opportunity for other tenants already offering fuel services on the airport to have a four-month window to sell aviation fuel without competition from the Complainant. Nonetheless, the actions of the Shreveport Airport Authority in delaying approval for new operations while it developed and revised applicable minimum standards were reasonable and consistent under the circumstances.

The Director finds the Respondent is not currently in violation of grant assurance 22, *Economic Nondiscrimination*, or grant assurance 23, *Exclusive Rights*, regarding delays in approving Complainant's commercial self-service fueling operation.[55]

(2) Prior Approval for a Commercial Self-Service Fueling Facility

Complainant alleges Respondent first approved, and then reneged on its consent, to allow Complainant to establish a commercial self-service fueling facility that included installing a new fuel tank on the airport, but outside of the airport's fuel farm. Complainant alleges that withdrawing approval after the fact caused the Complainant to incur unreasonable costs and put Complainant at an unfair competitive disadvantage in violation of grant assurance 22, *Economic Nondiscrimination*.

Having a fuel tank outside of the airport's fuel farm was not in violation of the airport's 1985 *General Aviation Standards* in effect at the time Complainant initially requested to establish a commercial self-service fueling facility. However, installing a new fuel tank outside of the airport's fuel farm is in violation of the new 1999 *Minimum Aviation Standards* effective September 1, 1999.[56] Based on the record evidence, it appears the Complainant installed a new fuel tank outside of the airport's fuel farm sometime

[54] Discussion on an action on a similar request by another operator, Steen Aviation, Inc. to sell aviation fuel at Shreveport Regional Airport was also delayed pending revision of the minimum standards applicable to that airport. [*See* FAA Exhibit 1, Item 8, *Complainant's Reply to Respondent's Answer*, page SAA5373.]
[55] Increasing the applicable minimum standards for the Complainant without requiring the current tenant to comply as well is discussed below under *B, Enforcement of Minimum Standards, Issue 2(1)*.
[56] Complainant made its initial request May 13, 1999. [*See* FAA Exhibit 1, Item 2, *Complaint*, tab 2, page FAA1108 / SAA5095.] Revised standards adding the requirement that fuel tanks to be located inside the airport's consolidated fuel farm were adopted August 24, 1999 and became effective September 1, 1999. [*See* FAA Exhibit 1, Item 2, *Complaint*, tab 12, exhibit B, page 10 (FAA1641).]

between September 1, 1999, and December 16, 1999[57] in violation of the new 1999 *Minimum Aviation Standards*. Complainant alleges it had permission from the Shreveport Airport Authority to install this new fuel tank away from the airport's fuel farm.

Respondent states that it never approved Complainant's application to establish its commercial self-service fueling operation[58] and did not grant permission to install a new fuel tank away from the airport's fuel farm.

The record shows that Respondent expressed concern about the proposed location of Complainant's new fuel tank from the beginning of its negotiations with Complainant. The Respondent informed the Complainant that it could accommodate Complainant's new fuel tanks in the airport's fuel farm, which could be enlarged as needed.[59] Respondent also advised Complainant that a committee was reviewing all general aviation minimum standards, including those related to commercial fueling operations.

Chronology of Events Regarding Installation of New Fuel Tank

- On May 13, 1999, Complainant requested approval to establish a commercial self-service fueling operation.[60]

- On June 18, 1999, Respondent instructed Complainant ***not*** to undertake any activities regarding the sale of fuel while standards were being reviewed and revised.[61]

- On July 2, 1999, Complainant submitted a written request asking for approval to install two self-service 12,000-gallon refueling units. Complainant acknowledged that the minimum standards were in need of revision, but asked to be allowed to proceed immediately.[62] Complainant stated in a meeting on the same date that he wanted to place a new fuel tank temporarily in a location away from the airport's fuel farm,[63] but would move it once Complainant built its new facility.

[57] An August 31, 1999, letter refers to Complainant's *plan to install* the fuel tank [FAA Exhibit 1, Item 6, exhibit 6-C]. A later letter indicates that the Authority became aware on December 16, 1999, that Complainant had installed the fuel tank. [FAA Exhibit 1, Item 6, exhibit C-D]
[58] FAA Exhibit 1, Item 6A, *Respondent's Answer, "*Memorandum of Points," page 18.
[59] FAA Exhibit 1, Item 2, *Complaint*, tab 2, page FAA1118 / SAA5105.
[60] *See* FAA Exhibit 1, Item 2, *Complaint*, tab 2, page FAA1108 / SAA5095.
[61] June 18, 1999 letter to Complainant. *See* FAA Exhibit 1, Item 2, *Complaint*, tab 2, page FAA1109-10 / SAA 5096-97.
[62] FAA Exhibit 1, Item 2, *Complaint*, tab 2, page FAA1114 / SAA5101. Complainant also states that there were no minimum standards governing a commercial self-service refueling operations prior to Complainant becoming a fixed-base operator. FAA Exhibit 1, Item 2, *Complaint*, tab 2, page 5 (FAA1014).
[63] Complainant wanted to place the fuel tanks in the location near Southern's school. [FAA Exhibit 1, Item 2, *Complaint*, tab 2, FAA1118 / SAA 5105].

Complainant was asked to submit plans in writing so the board members working on fuel standards[64] could review Complainant's request.[65]

- On August 4, 1999, Respondent held a tenant meeting announcing its intention to establish a separate set of minimum standards for the Shreveport Downtown Airport.[66]

- On August 31, 1999, the Shreveport Airport Authority sent a letter to Complainant which acknowledged Complainant was granted permission to begin service as a fixed-base operator, but noted that discussion was continuing on Complainant's request to provide a commercial self-service fueling operation. The letter recommends approval for a temporary location for one of Complainant's new fuel tanks contingent upon submission and approval of several items from Complainant.[67]

  The August 31, 1999, letter states in pertinent part:[68]

> The Shreveport Airport Authority recently granted your company permission to begin service as a fixed-base operator at Shreveport's Downtown Airport. The Airport Authority is continuing to work with the Shreveport Fire Department to address your request to provide a [commercial] self-service operation at the Downtown Airport, which will be in addition to your [fixed-base] operation.
>
> …the National Fire Prevention Bureau code prohibits above-ground tanks adjacent to Runways, Taxiways, Aprons or Aircraft Service areas. After much discussion, it was suggested that above-ground tanks could be approved by Fire Prevention if the tanks are fifty (50) feet from any building and seventy-five (75) feet from a Runway, Taxiway, Apron, or Aircraft Service area.
>
> …you plan to install one 12,000 gallon fuel tank north of the terminal building, near the terminal drive and inside the fence. This tank, you said, will be used to provide 100 LL AV gas as a [commercial] self-service fueling station and will be a temporary situation. A second tank will be located inside the fuel tank farm on the north side of the Downtown Airport. The second tank will contain Jet A fuel.

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[64] The board members working on the fuel standards, Ben Levy and Dr. C.O. Simpkins, were not present at the July 2, 1999, meeting with Complainant. [*See* FAA Exhibit 1, Item 2, *Complaint*, tab 2, pages FAA1116 /SAA 5103 and FAA 1118 / SAA 5105.]
[65] FAA Exhibit 1, Item 2, *Complaint*, tab 2, FAA1118 / SAA5105.
[66] FAA Exhibit 1, Item 9, *Respondent's Rebuttal*, exhibit 11.
[67] FAA Exhibit 1, Item 2, *Complaint*, tab 2, page FAA1132-33 / SAA 5125-26
[68] FAA Exhibit 1, Item 2, *Complaint*, tab 2, page FAA1132 / SAA5125.

> …the Shreveport Airport Authority recommends the discussed location be approved, **contingent upon** submission and approval of …before self-service fueling commences. (Emphasis added.)

One of the required items to be submitted was a site plan to be approved by the Shreveport Fire Prevention Bureau.[69] The Fire Prevention Bureau had previously advised the Director of Airports in a written memorandum that the site plan submitted by Complainant did not comply with the distance issues established for Complainant's fuel tank location. Further, the memorandum notes Complainant was informed that if a location can be approved, Complainant will still be required to submit the plan to the State Fire Marshal and the City Permit Center, as well as meeting other applicable inspections and requirements.[70]

Complainant interpreted the August 31, 1999, letter to represent approval of Complainant's requested location for its fuel tank and permission to start its commercial self-service fueling operation as soon as it received certificates from the fire marshal.[71] Complainant relies on this letter to support its allegation that Respondent approved Complainant's fueling operation and tank location.

- On December 17, 1999, the Respondent notified Complainant that its new fuel tank and pump had been placed on an aircraft parking apron without proper Authority approval. The Shreveport Airport Authority directed the Complainant to remove the fuel tank.[72] The Respondent obtained an Order of Eviction for the tank and pump.

- On March 1, 2000, the Respondent advised Complainant that it was attempting to find an acceptable alternative location to move Complainant's above-ground tank and pump.[73]

An agreeable alternative location was not found. Respondent states that it attempted to determine whether a site other than the airport's fuel farm would be acceptable, but ultimately decided that safety considerations demanded that the new fuel storage tanks be placed in the airport's fuel farm as required by the 1999 *Minimum Aviation Standards*.[74] Complainant was required to remove the tank and pump.

The Director is not persuaded that the August 31, 1999, letter grants permission for the Complainant to proceed with the installation of its new fuel tank outside the airport's fuel farm. Clearly, the letter acknowledges permission for the Complainant to operate as a fixed-base operator. Just as clearly, the letter states that concerns regarding the fueling operations continued to be under discussion. The Respondent's recommendation to

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[69] FAA Exhibit 1, Item 2, *Complaint*, tab 2, page FAA 1132 / SAA5125.
[70] Inter-office memorandum dated August 25, 1999. FAA Exhibit 1, Item 2, *Complaint*, tab 2, page FAA1134 / SAA5127.
[71] FAA Exhibit 1, Item 2, *Complaint*, page 11.
[72] FAA Exhibit 1, Item 2, *Complaint*, tab 2, page FAA 1163 / SAA 5156.
[73] FAA Exhibit 1, Item 2, *Complaint*, tab 2, page FAA1192 / SAA 5185.
[74] FAA Exhibit 1, Item 9, *Respondent's Rebuttal Brief*, page 8.

approve the temporary site for one fuel tank was contingent upon several actions by the Complainant, including obtaining approval from the Shreveport Fire Prevention Bureau. Complainant provides a copy of the site plan,[75] but no clear evidence to show approval by the Fire Prevention Bureau. [76]

Complainant asserts Respondent admitted granting approval for Complainant's self-service fueling operation in a letter sent to Complainant October 25, 1999. Complainant states, "…on October 25, 1999, the [Respondent] sent [Complainant] a letter now advising that they were in error in granting him approval, and that it has six months to come into compliance with the 'minimum standards required to operate as a [fixed-base operator]."" [77]

The referenced letter, however, does not support Complainant's contention that approval for Complainant's fueling operation was granted and then withdrawn. Rather, the referenced letter acknowledges that Respondent omitted the compliance period in the agenda reflecting *Complainant's additional request to be allowed six months to come into compliance with the minimum standards required to operate as a fixed-base operator.*[78] The Director cannot interpret this letter to imply Respondent approved a request for Complainant to operate without ever meeting the airport's minimum standards.

The Director is not persuaded that Respondent granted approval for Complainant to install a new fuel tank on an aircraft parking apron for the purpose of establishing a commercial self-service fueling operation. Rather, the record reflects that Complainant established its commercial fueling operation and placed its fuel tank and pump on an aircraft parking apron *without* Authority permission.[79] Further, the Director finds that Complainant incurred financial obligations regarding this fuel tank in direct opposition to Respondent's instruction to wait for the revised minimum standards to be addressed. Therefore, the Director finds the Respondent is not currently in violation of grant assurance 22, *Economic Nondiscrimination*, regarding Complainant's premature installation of its new fuel tank in an unapproved location that is, and was at the time, incompatible with the airport's 1999 *Minimum Aviation Standards*.

(3) Continued Denial to Establish a Commercial Self-Service Fueling Facility

[75] FAA Exhibit 1, Item 2, *Complaint*, tab 2, page FAA 1174 / SAA 5167.
[76] Respondent acknowledges that Complainant provided some of the required documents. Respondent does not identify those documents that were not provided. Complainant was required to obtain approval of the site plan by the Fire Prevention Bureau. While we found no direct evidence of such approval in the record, Respondent did not argue that Complainant had not obtained such approval. [*See* FAA Exhibit 1, Item 6, *Respondent's Answer*, exhibit 6-G.]
[77] See FAA Exhibit 1, Item 8, *Complainant's Reply to Respondent's Answer*, page 19
[78] FAA Exhibit 1, Item 2, *Complaint*, tab 2, page FAA 1156 / SAA 5149.
[79] *See* FAA Exhibit 1, Item 2, *Complaint*, tab 2, page FAA 1163 / SAA 5156.

Complainant alleges Respondent continues to deny Complainant's request to establish a commercial self-service fueling facility,[80] thereby effectively conveying an exclusive right to its competitor in violation of grant assurance 23, *Exclusive Rights*.

Respondent states that, to the contrary, Complainant currently operates above-ground fuel tanks in the airport's fuel farm consistent with a May 4, 2000, *Memorandum of Understanding*.[81]

The primary dispute regarding the establishment of Complainant's commercial self-service fueling facility is the location of Complainant's fuel tanks.[82] Complainant wants to have its commercial self-service fueling operation on the north side of the terminal building[83] and does not want to be required to install its fuel tanks in the airport's fuel farm.

The record shows that on April 6, 2001, Complainant requested to install a minimal self-service facility.[84] Minutes from the June 21, 2001, Authority Board Meeting indicate that the Authority considered Complainant's request and was willing to grant preliminary approval of Complainant's self-service fueling operation contingent upon approval of the site location.[85]

On September 9, 2002, the Complainant submitted another request to establish its fueling facility.[86] The proposed location in both the April 6, 2001, and September 9, 2002, requests appears to be in the same area from which the Complainant was previously forced to remove its tank and pump.[87]

The record shows that Complainant and Respondent could not agree on an approved alternative site location for Complainant's fuel tanks. As a result, Complainant reluctantly placed its fuel tank in the airport's fuel farm.[88] While the fuel farm location does not meet Complainant's site *preferences*, it does afford Complainant a means to sell fuel on the airport in competition with other fixed-base operators.

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[80] FAA Exhibit 1, Item 2, *Complaint*, pages 11-12.
[81] FAA Exhibit 1, Item 9, *Respondent's Rebuttal*, page 7. <u>*See also*</u>, FAA Exhibit 1, Item 6A, *Respondent's Answer*, exhibit 1-E.
[82] Details of Complainant's allegations regarding the approved location of its fuel tank(s) is discussed more fully in other sections of this determination.
[83] FAA Exhibit 1, Item 8, *Complainant's Reply to Respondent's Answer,* page 17.
[84] FAA Exhibit 1, Item 2, *Complaint*, tab 2, page FAA1202 / SAA5194.
[85] FAA Exhibit 1, Item 9, *Respondent's Rebuttal*, exhibit 12, "Board Meeting No. 547-01," page 6.
[86] FAA Exhibit 1, Item 8, *Complainant's Reply to Respondent's Answer*, page SAA8322.
[87] The initial site plan shows a tank 50 feet north of the terminal building. [<u>*See*</u> FAA Exhibit 1, Item 2, *Complaint*, tab 2, page FAA1174 / SAA5167.] The April 6, 2001, proposal identifies an area "just north of the terminal building" and shows a diagram allowing 50 feet from the terminal building. [*See* FAA Exhibit 1, Item 2, *Complaint*, tab 2, pages FAA1202-3 / SAA5194-95.] The September 9, 2002 proposal specifically references the initial location with additional space provided as required by the Fire Marshal. [<u>*See*</u> FAA Exhibit 1, Item 8, *Complainant's Reply to Respondent's Answer*, page SAA 8322.]
[88] See FAA Exhibit 1, Item 2, *Complaint*, tab 5, FAA 1338.

The Director finds the Shreveport Airport Authority is not currently in violation of grant assurance 23, *Exclusive Rights*, regarding Complainant's ability to establish a commercial self-service fueling operation at the Shreveport Downtown Airport.

Conclusion on Issue 1: Establishing a Commercial Fueling Facility

The Director finds the Shreveport Airport Authority is not currently in violation of grant assurances 22, *Economic Nondiscrimination*, or 23, *Exclusive Rights*, regarding allegations that it impeded Complainant's attempts to establish a commercial self-service fueling facility at the Shreveport Downtown Airport.

(C) Enforcement of Minimum Standards

Issue 2: Whether Respondent failed to enforce its minimum standards consistently among all tenants at the Shreveport Downtown Airport in violation of grant assurance 22, *Economic Nondiscrimination*.

Complainant alleges that Respondent did not enforce its minimum standards consistently regarding: (1) fueling operations, (2) leased-space requirements, (3) staffing requirements, and (4) insurance coverage. In each case, Complainant alleges that Respondent placed Complainant in an unfair economic position in violation of grant assurance 22, *Economic Nondiscrimination*, by allowing Complainant's competitors to circumvent the minimum standards while holding Complainant to those same standards.

(1) Minimum Standards for Fueling Operation

Complainant alleges the Respondent placed it in an unfair competitive position in violation of grant assurance 22, *Economic Nondiscrimination*, by requiring Complainant to adhere to a different set of minimum standards from those applied to its competing fixed-base operator regarding the placement of fuel storage tanks. Specifically, Complainant argues that it is required to place it fuel tanks inside the airport's fuel farm under the new 1999 *Minimum Aviation Standards* while its competing fixed-base operator is not being held to this standard.

Respondent argues that both fixed-base operators are subject to the minimum standards currently in effect, but admits Complainant's competitor is not required to make certain changes, such as relocating fuel tanks that were installed before the new 1999 *Minimum Aviation Standards* were developed for the Shreveport Downtown Airport.[89]

Record evidence shows the Shreveport Airport Authority has approved two sets of airport minimum standards. The first set, Shreveport Airport Authority *General Aviation Standards,* was adopted August 5, 1985, revised April 1, 1986, reprinted March 1996, updated and reprinted May 1999, and eventually revised effective July 1, 1999.[90] (For

[89] FAA Exhibit 1, Item 6A, *Respondent's Answer*, "Memorandum of Points," page 22.
[90] FAA Exhibit 1, Item 6, *Respondent's Answer*, exhibit 2-A.

ease in reading, these standards are referred to as the 1985 *General Aviation Standards* throughout this Director's determination.)

Both Complainant and its competing fixed-base operator are bound by their lease agreements to adhere to the basic set of minimum standards in the 1985 *General Aviation Standards*. The Complainant's lease specifies that it will be bound by the revisions effective July 1, 1999. While the competitor's lease agreement does not include this same specification, that point is irrelevant to this discussion. The disputed requirement to place fuel tanks inside the airport's fuel farm is not part of the 1985 *General Aviation Standards*, including the revised version effective July 1, 1999.

On August 4, 1999 – after the Authority had entered into its agreement with Complainant's competitor, but before the effective date of Complainant's lease – Respondent announced it intended to establish a separate set of minimum standards for the Shreveport Downtown Airport.[91] Representatives from Complainant and Complainant's competing fixed-base operator were present at the tenant meeting announcing this plan.[92]

This second set of minimum standards, Shreveport Downtown Airport *Minimum Aviation Standards,* was adopted August 24, 1999, and became effective September 1, 1999.[93] (For ease in reading, these standards are referred to as the 1999 *Minimum Aviation Standards* throughout this Director's determination.)

These new 1999 *Minimum Aviation Standards*, applicable specifically to the Shreveport Downtown Airport, added certain requirements for fixed-base operators regarding fuel storage. Table 1, *Comparison of Minimum Standards for Fixed-Base Operator Fueling Services,* shows that fixed-base operators could no longer install underground fuel tanks effective September 1, 1999. In addition, as of that date, fixed-base operators had to locate new fuel tanks within the airport's fuel farm only.

Table 1: Comparison of Minimum Standards for Fixed-Base Operator Fueling Services

	A	B	C
	(1985) ***General Aviation Standards***[94]	(1999) ***Minimum Aviation Standards***[95]	**1999 Revisions affecting fuel storage**
	August 5, 1985 *Effective July 1, 1999*	*Adopted August 24, 1999;* *Effective September 1, 1999*	

[91] FAA Exhibit 1, Item 9, *Respondent's Rebuttal*, exhibit 11.
[92] Complainant Glenn Adams of Royal Air and Bruce DeVille of Air One are listed as attendees. President of Air One, Lana Deville, is not listed at an attendee. [*See* FAA Exhibit 1, Item 9, *Respondent's Rebuttal*, exhibit 11.]
[93] FAA Exhibit 1, Item 6, *Respondent's Answer*, exhibit 2-C.
[94] FAA Exhibit 1, Item 6, *Respondent's Answe*r, exhibit 2-A, *see* page 10 [FAA 1605].
[95] FAA Exhibit 1, Item 6, *Respondent's Answer*, exhibit 2-C, *see* page 10.

(1)	Fuel tanks may be underground or above ground tanks.	Fuel tanks must be above-ground tanks.	***Eliminates underground storage.***
(2)	Two grades of fuel	Two grades of fuel	*no change*
(3)	Minimum 10,000 gallon capacity for each grade of fuel.	Minimum 10,000 gallon capacity for each grade of fuel.	*No change*
(4)	Location of tanks not specified.	New fuel tanks will be located in the Shreveport Airport Authority's consolidated fuel farm.	***Requires new fuel tanks to be located in the airport's fuel farm.***

The record supports that Respondent applied the more stringent standards from the new 1999 *Minimum Aviation Standards* regarding fuel tanks and fuel tank location to the Complainant but not to Complainant's competitor. In fact, the primary point of contention regarding Complainant's attempts to establish a commercial self-service fueling facility under (*A), Establishing a Commercial Fueling Facility, Issue 1*, above is the fuel tank location.

Complainant alleges, and the record supports, Respondent deferred approval of Complainant's application to establish a commercial self-service fueling operation specifically so it could address – and in this case, increase – the minimum standards regarding the location of its fuel tanks.[96]

It is not a violation of grant assurances, however, for airport sponsors to increase minimum standards. In general, airport minimum standards are intended to promote safety in all airport activities, maintain a higher quality of service for airport users, protect airport users from unlicensed and unauthorized products and services, enhance the availability of adequate services for all airport users, and promote the orderly development of airport land.[97] Minimum standards should be tailored to the airport to which they will apply,[98] and can be modified to reflect the airport's desire to learn from experience and to be watchful for improvement in the way it does business in order to protect the public interest.[99] The FAA recognizes that frequent changes in an airport's

[96] See *A, Establishing a Commercial Fueling Facility, Issue 1(1),* in this Director's determination.
[97] *See* FAA Advisory Circular No. 150/5190-5, dated June 10, 2002, *Exclusive Rights and Minimum Standards for Commercial Aeronautical Activities,* 2-2(a).
[98] *See* FAA Advisory Circular No. 150/5190-5, dated June 10, 2002, *Exclusive Rights and Minimum Standards for Commercial Aeronautical Activities,* 2-2(c).
[99] *See* FAA Advisory Circular No. 150/5190-5, dated June 10, 2002, *Exclusive Rights and Minimum Standards for Commercial Aeronautical Activities,* 2-2(e)NOTE.

minimum standards may lead to the appearance of manipulating the standards to protect the interests of one or a few businesses at the expense of others.[100]

The record does not support that frequent change or intentional manipulation was the case here. However, the record does show that Respondent applied the increased 1999 *Minimum Aviation Standards* regarding the placement of fuel tanks to the Complainant and not to the Complainant's competitor. Respondent did so even though Respondent's lease agreements with the two fixed-base operators became effective just four months apart. The competitor's lease agreement was effective May 1, 1999, before the new standard became effective; the Complainant's agreement became effective September 1, 1999, the day the new standards took effect.[101] The Director carefully considered the timing of the 1999 *Minimum Aviation Standards* in light of the short four-month difference in the effective dates of the two leases.

The record evidence shows that even though the effective dates of the two lease agreements were just four months apart, the two operators actually established their businesses more than a year apart. The competitor began operating under a temporary arrangement as a fixed-base operator in May 1998,[102] one year before Complainant first requested to become a fixed-base operator in May 1999.[103] As part of its fixed-base operation, the competitor installed at least one fuel tank in a location away from the airport's fuel farm. The record does not provide the date when the competitor installed its fuel tank, but the record does indicate the competitor's fuel tank was installed *before* the new 1999 *Minimum Aviation Standards* requiring fuel tanks to be placed in the airport's fuel farm became effective,[104] and possibly before these new standards were contemplated.

Complainant does not argue that its competitor was allowed to install new fuel tanks in a site away from the airport's fuel farm in violation of the 1999 *Minimum Aviation Standards*. Rather, the Complainant argues that it should not have to comply with any standards its competitor was not already meeting at the time Complainant installed its fuel tanks. Since the competitor installed its tanks before the new standards became effective, Complainant argues it should not have to meet these new standards either.

The FAA's policy regarding the application of minimum standards is that those standards, once established, should be applied objectively and uniformly to all similarly-situated

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[100] *See* FAA Advisory Circular No. 150/5190-5, dated June 10, 2002, *Exclusive Rights and Minimum Standards for Commercial Aeronautical Activities,* 2-2(e)NOTE.

[101] Complainant's lease agreement was effective September 1, 1999 [*see* FAA Exhibit 1, Item 6, *Respondent's Answer,* exhibit 1-C, page 2 [FAA 1900]; its competitor's agreement was effective May 1, 1999 [*see* FAA Exhibit 1, Item 6, *Respondent's Answer*, exhibit 1-B, page 2].

[102] Record evidence shows dates of both April 1998 and May 1998. [*See* FAA Exhibit 1, Item 6A, *Respondent's Answer,* "Memorandum of Points," page 6; and Item 6, exhibit 1-A, page FAA2059/SAA5773.]

[103] FAA Exhibit 1, Item 2, *Complaint*, tab 2, page FAA1014.

[104] In arguing its own right to install a fuel tank away from the airport's fuel farm, Complainant asserted that it should not have to comply with any standards that its competitor was not already meeting. [*See* FAA Exhibit 1, Item 2, *Complaint*, tab 2, page FAA1117 / SAA5104.]

aeronautical activities and services. In the matter of fuel tank location, the Complainant and its competing fixed-base operator were not similarly situated. Complainant requested to install new fuel tanks while the Authority was in the process of revising its minimum standards regarding fueling operations. Its competitor's fuel tanks were installed *before* such revisions were adopted, and possibly before they were even contemplated. The record does not indicate that Complainant's competitor had an outstanding request to install new fuel tanks during the same period as the Complainant – when the standards were under revision.

When standards are increased, the FAA recognizes that some requirements may need to be phased in to allow tenants already operating on the airport time to meet the new requirements without experiencing unnecessary financial hardship. The record shows the Respondent acknowledged the financial implications to its tenants of developing new minimum standards for the Shreveport Downtown Airport. The Respondent allowed tenants to phase-in certain requirements, such as minimum leased-space requirements. For example, the 1999 *Minimum Aviation Standards* applicable to the Shreveport Downtown Airport state,

> "The space requirements established for commercial operations by the Minimum Standards contained herein shall not be applicable to current Airport leases during the primary or any extended terms of their leases. As conditions permit, the Authority plans to relocate such non-conforming lessees to premises which have the minimum areas required."[105]

At the same time, Respondent identified other requirements that would not be retroactive because of the high cost to comply. Respondent states, that the 1999 *Minimum Aviation Standards* "specifically provide that existing operators do not have to incur added expenses to satisfy certain changes."[106] The 1999 *Minimum Aviation Standards* state,

> "*All **new** tank facilities will be above ground in accordance with [National Fire Prevention Association] requirements and will be located in an area designated by the Shreveport Airport Authority."* [107] (Emphasis ours.)

Complainant and Respondent acknowledge that Complainant is expected to comply with the new 1999 *Minimum Aviation Standards* requiring it to *install* new fuel tank(s) within the airport's fuel farm. At the same time, Complainant's competitor is not being forced to *move* fuel tanks that were already placed outside of the airport's fuel farm with Authority approval before the new requirement became effective.

The record does not provide any evidence to suggest this action is a deliberate attempt to provide an economic advantage to the Complainant's competitor. Rather, implementation

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[105] FAA Exhibit 1, Item 2, *Complaint*, exhibit 12(2)(b), page FAA 1635; and Item 6, *Respondent's Answer*, exhibit 2-C, page 4.
[106] FAA Exhibit 1, Item 6A, *Respondent's Answer*, "Memorandum of Points," page 7.
[107] FAA Exhibit 1, Item 2, *Complaint*, exhibit 12(2)(b), page FAA 1635; and Item 6 *Respondent's Answer*, exhibit 2-C, page 4.

of the requirement is a matter of timing. The competitor had installed its fuel tank(s) in compliance with the 1985 *General Aviation Standards* before the new 1999 *Minimum Aviation Standards* were adopted. While Complainant also installed fuel tank(s) in compliance with the 1985 *General Aviation Standards,* the record shows that Complainant did so after the new 1999 *Minimum Aviation Standards* were adopted, and without the approval from the Shreveport Airport Authority. Any expense associated with moving its fuel tank was a burden brought on by the Complainant, itself, and not by the change in minimum standards.

The Director is not persuaded the Respondent failed to enforce its minimum standards consistently regarding placement of new fuel tanks. The Director finds the Respondent is not currently in violation of grant assurance 22, *Economic Nondiscrimination*, regarding implementation of its 1999 *Minimum Aviation Standards* for new fuel tank placement.

(2) Minimum Standards for Leased-Space Requirements

Complainant alleges Respondent does not enforce its minimum standards for leased-space requirements consistently among (a) fixed-base operators, and among (b) flight school and aircraft rental businesses. In each case, Complainant alleges it is held to a higher standard, placing it at an economic disadvantage in violation of grant assurance 22, *Economic Nondiscrimination*.

(a) Fixed-base Operators

The Complainant alleges Respondent placed it in an unfair competitive position in violation of grant assurance 22, *Economic Nondiscrimination*, by requiring Complainant to lease the minimum land area and hangar and office space while permitting its competing fixed-base operator to operate with less than the minimum space required.[108]

As shown in Table 2 below, the minimum leased-space requirements for fixed-base operator land area and hangar and office space are lower under the 1999 *Minimum Aviation Standards* than they were under the 1985 *General Aviation Standards.*

Table 2: ***Minimum Standards for Fixed-base Operator Leased Space*** [109]

	1985 *General Aviation Standards* (adopted August 5, 1985 and last revised July 1, 1999) [110]	**1999 *Minimum Aviation Standards*** (adopted August 24, 1999, effective September 1, 1999) [111]
Land Area	70,000 sq. ft.	50,000 sq. ft.

[108] FAA Exhibit 1, Item 2, *Complaint*, pages 20-27, and Item 2, tab 1, page 2 (FAA1001)
[109] Includes space requirements for both aircraft storage and aircraft maintenance/repair.
[110] *See* FAA Exhibit 1, Item 6, *Respondent's Answer*, Exhibit 2-A, page 9
[111] *See* FAA Exhibit 1, Item 6, *Respondent's Answer*, Exhibit 2-C, page 9

Hangar and Office Space	14,500 sq. ft.	10,000 sq. ft.

The 1985 *General Aviation Standards* were applicable in 1998 when Complainant's competitor first began its fixed-base operation at the Airport.[112]

Complainant alleges that the Respondent did not require its competing fixed-base operator to meet the higher minimum standards in effect at the time the competitor began operating at the Airport.[113] In addition, Complainant alleges that the competitor was still not in compliance with the applicable minimum standards for leased-space requirements when it signed its five-year lease agreement with the airport on July 9, 1999.

The competitor's July 9, 1999, lease agreement identifies leased land area sufficient to meet the 1999 *Minimum Aviation Standards* but not the 1985 *General Aviation Standards*. Likewise, the agreement identifies sufficient hangar and office space to meet the 1999 *Minimum Aviation Standards*, but not the 1985 *General Aviation Standards*.[114] (See Table 3.)

Table 3: ***Competitor Air One's Leased Space Compared to Minimum Standards***

	1985 *General Aviation Standards* (adopted August 5, 1985 and last revised July 1, 1999) [115]	**1999 *Minimum Aviation Standards*** (adopted August 24, 1999, effective September 1, 1999) [116]	**July 9, 1999 Lease Agreement between Respondent and Competitor, Air One**
Land Area	70,000 sq. ft.	50,000 sq. ft.	65,298 sq. ft.
Hangar and Office Space	14,500 sq. ft.	10,000 sq. ft.	10,700 sq. ft.

July 9, 1999, Lease Agreement

According to the July 9, 1999, lease agreement, competitor Air One did not meet the minimum standards in effect at the time it entered into its formal lease agreement with the Airport, but it did meet the revised 1999 *Minimum Aviation Standards* effective two months later on September 1, 1999.

The goal of the FAA compliance program is to bring airports into compliance with their grant assurances. Grant assurance 22, *Economic Nondiscrimination*, obligates airports to

[112] Complainant's competitor, Air One, obtained temporary approval to operate as a fixed-base operator for thirty days effective May 1, 1998. [*See* FAA Exhibit 1, Item 6, *Respondent's Answer*, exhibit 1-A]

[113] One of the stipulations for obtaining a permanent fixed-base operator permit was that competitor Air One "must show documentation that the required space requirements have been met." [*See* FAA Exhibit 1, Item 6, *Respondent's Answer*, exhibit 1-A.]

[114] *See* FAA Exhibit 1, Item 6, *Respondent's Answer*, exhibit 1-B, page 2

[115] *See* FAA Exhibit 1, Item 6, *Respondent's Answer*, Exhibit 2-A, page 9

[116] *See* FAA Exhibit 1, Item 6, *Respondent's Answer*, Exhibit 2-C, page 9

treat fixed-base operators making the same or similar use of facilities in a like manner. Based on the evidence presented, it appears the Respondent is treating the two fixed-base operators in a like manner by applying the 1999 *Minimum Aviation Standards* for land area and hangar and office space to both operators. Based only on the competitor's lease agreement, the record evidence indicates the competitor is meeting the same standard for leased space that is applied to the Complainant.

The Complainant, however, alleges its competitor does not now, and never did, meet either set of minimum standards for leased space, regardless of the language in the lease. The Respondent denies this allegation, stating that the Airport monitors leased-space requirements for both fixed-base operators and applies its standards consistently.

Respondent's Compliance Inspections

The Respondent notes that in February 2000, it conducted minimum aviation standards compliance inspections of both fixed-base operators. The inspections were conducted in accordance with the 1999 *Minimum Aviation Standards*. Without providing any details of the inspection, the Deputy Director of Airports reported that the competitor was meeting all of the requirements as stated in the 1999 *Minimum Aviation Standards* for fixed-base operations.[117]

Complainant alleges the calculations for the February 2000 compliance audit of its competitor were incorrect. Specifically, Complainant alleges that its competitor met the minimum standards for space requirements, in part, by representing that it subleased a 2,400 square foot hangar from another tenant, Air America. Complainant alleges this sublease never occurred.[118]

In addition, the Complainant alleges that its competitor's hangar space count included a 3,500 square foot hangar that the competitor no longer controls or operates as part of its fixed-base operation. Complainant asserts that the competitor sold or subleased this hangar to a private company or individual that uses the hangar exclusively for itself. In so doing, the competitor effectively reduced its total fixed-base operator hangar space by the number of square feet subleased to the private company or individual.[119]

Complainant alleges the reduction in hangar space through the sublease from Air America that never took place, plus the release of additional hangar space to a private company or individual, combine to take the competitor below the required minimum space for fixed-base operations hangar and office space.

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[117] *See* FAA Exhibit 1, Item 6, *Respondent's Answer*, exhibit 5.

[118] *See* FAA Exhibit 1, Item 2, *Complaint*, tab 2, page FAA 1010

[119] *See* FAA Exhibit 1, Item 2, *Complaint*, page 21, #52. The record evidence includes a December 2, 2000, agreement transferring Lot #58 Hangar, which had been included in Air One's five-year lease agreement with the Airport, to another party. [*See* FAA Exhibit 1, Item 2, *Complaint*, tab 18, FAA2418] According to the July 9, 1999, Air One five-year lease agreement, Lot #58 Hangar consists of 3,500 square feet. [*See* FAA Exhibit 1, Item 6, *Respondent's Answer*, exhibit 1-B, page 2]

The Respondent argues that the February 2000 audit of competitor Air One shows the competing fixed-base operator meets the 1999 *Minimum Aviation Standards* for leased space *even if* subleased areas referenced by the Complainant are subtracted from the totals. The Respondent provides no numbers to support this statement.

The Director recalculated the competitor's leased space factoring in the sublease allegations made by the Complainant. Based on these calculations, the competing fixed-base operator falls short of the required minimum hangar and office space if the space identified in the two sublease issues alleged by the Complainant is subtracted. (See Table 4.)

Table 4: ***Competitor Air One's Recalculated Leased Hangar and Office Space***

Hangar and Office Space	
1999 *Minimum Aviation Standard*:	10,000 sq. ft.
Air One's leased space based on July 9, 1999, lease agreement:	10,700 sq. ft.
- Less Air America sublease that allegedly did not take place:	(2,400 sq. ft.)
- Less hangar space subleased or sold to private company:	(3,500 sq. ft.)
Total hangar and office space:	7,200 sq. ft.

Deficiency in Leased Space

Record evidence shows Respondent was, or should have been, aware competitor Air One did not meet the 1999 *Minimum Aviation Standards* for fixed-base operator hangar and office space. On June 29, 2001, the Director of Airports advised the Shreveport Airport Authority Board Members that staff had confirmed the existing square footage maintained by Air One and compared it to the square footage required by the minimum standards as instructed by Assistant City Attorney, John Frazier.[120] On the same date, Mr. Frazier advised Air One that it did not meet the minimum hangar and office space requirement.[121] The administrative record did not contain details on the deficiencies.

Engineering Drawings of Building Space

The administrative record contains other documents relating to the leased-space requirement for fixed-base operator hangar and office space, as well. For example, the record contains an engineering report from September 11, 2001. The engineering report documents existing space in various buildings on the airport.[122] The value of this report in resolving the current complaint is somewhat nebulous. The engineering drawings identify building numbers and the square footage for hangar and office space within the various buildings included in the drawings. Some of the building numbers match those in the competitor's lease agreement. Other building numbers do not match. The

[120] FAA Exhibit 1, Item 6, *Respondent's Answer*, exhibit 7-B
[121] FAA Exhibit 1, Item 6, *Respondent's Answer*, exhibit 7-C
[122] On September 11, 2001, the engineering firm of Cothren, Graff, Smoak Engineering, Inc., provided drawings of certain buildings, including the buildings leased by competitor Air One. [*See* FAA Exhibit 1, Item 6, *Respondent's Answer*, Exhibit 7-D.]

competitor's lease agreement includes some of the buildings included in the engineering drawings and some that are not part of the engineering drawings.

Table 5 below shows the hangar and office space identified by building number in both the competitor's July 9, 1999, lease agreement and the September 11, 2001, engineering drawings.

Table 5: ***Comparison of Competitor's Lease Agreement and Engineering Drawings for Hangar and Office Space***

A	B	C
Lot/Building	**Hangar & Office Space identified in Competitor's July 9, 1999 Lease Agreement** [123]	**Hangar & Office Space identified in the September 11, 2001, Engineering Report** [124]
Lot 9 Building	2,400 sq. ft.	3,239 sq. ft.[125]
Lot 11 Building	*Not on lease*	2,480 sq. ft.[126]
Lot 18 Building	4,800 sq. ft.	5,254 sq. ft.[127]
Lot 19 Building	*None*	1,426 sq. ft.[128]
Lot 58 Building	3,500 sq. ft.	3,532 sq. ft.[129]
Lot 59 Building	*(Less than 1 sq. ft.)*	*no drawing provided*

The engineering drawings confirm that the building numbers included in the drawings contain *at least* the amount of hangar and office space listed in the July 9, 1999, agreement. In other words, the engineers confirmed that the space purported to be leased for hangar and office space does exist within those buildings. The drawings do not indicate which tenant is leasing these buildings, and cannot support that the competitor leased the space required under the 1999 *Minimum Aviation Standards*.

Director's Conclusion

Based on the record evidence, the Director is not persuaded that Respondent ensured Complainant's competitor, Air One, met the minimum standards for leased hangar and office space at all times. That said, however, it is not the Director's responsibility to police individual tenant compliance with airport minimum standards. Rather, the Director must determine in this case whether the Respondent treated the Complainant and its competitor in an unjustly dissimilar manner regarding the application of minimum standards for leased space.

Grant assurance 22, *Economic Nondiscrimination*, obligates the Respondent to make the Shreveport Downtown Airport available to both the Complainant and its competitor on reasonable terms and without unjust discrimination. The Respondent argues it has treated the two fixed-base operators similarly by allowing both operators the timing flexibility needed to meet the airport's minimum standards at various times. Complainant, on the

[123] *See* FAA Exhibit 1, Item 6, *Respondent's Answer*, exhibit 1-B, page 2. (Numbers are rounded to the nearest whole foot.)
[124] *See* FAA Exhibit 1, Item 6, *Respondent's Answer*, exhibit 7-D
[125] Hangar Area: 2,410 sq. ft + Office Area: 828.6042 sq. ft. = 3,238.6042 sq. ft.
[126] Hangar Area: 2,254.9167 sq. ft. + Office Area: 224.5833 sq. ft. = 2,479.5 sq. ft.
[127] Excludes Overhang Area and Lean-to areas. Hangar Area: 4,407.4258 sq. ft.; + Single Story Area: 81.0383 sq. ft.; + Two Story Area (each floor): 382.5282 sq. ft. + 382.5282 sq. ft. = 5,253.5205 sq. ft.
[128] Excludes Overhang Area. Office Area: 1,425.7913 sq. ft.
[129] Hangar Area: 3,531.7222 sq. ft.

other hand, asserts that the Respondent has strictly enforced the minimum standards on the Complainant alone.[130]

The record does not support Complainant's statement. On the contrary, the record evidence shows that both fixed-base operators have been subjected to compliance inspections. In addition, both fixed-base operators have been out of compliance with minimum space requirements at one time or another, and both fixed-base operators have had an opportunity to remain on the airport while addressing space issues.

- In February 2000, Respondent conducted a compliance inspection for both Complainant and its competitor.

- On February 29, 2000, the Shreveport Airport Authority notified Complainant that it was not meeting the minimum leased-space requirements for land or for hangar and office space.[131]

- On May 8, 2000, the Respondent reported to the FAA that Complainant was in the process of subleasing an additional hangar, which would put it in compliance with hangar and office space.[132]

- On June 29, 2001, Complainant's competitor Air One was advised that it did not meet the minimum hangar and office space requirement.[133]

In addition, the record reflects that the two competing fixed-base operators routinely filed complaints to the Respondent and to the FAA alleging violations of the minimum standards against each other. For example,

- On August 5, 1999, Complainant challenged the Respondent to show how competitor Air One met the minimum standards for hangar and office space.[134]

- On April 13, 2000, competitor Air One complained to the FAA that the Respondent continued to allow Complainant to operate without meeting minimum standards, including the requirement to lease 10,000 square feet of hangar and office space.[135]

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[130] Complainant alleges it "has been subjected to several … compliance audits and been informed that [it] had to completely comply with the Minimum Standards" while at the same time "Air One has not been subjected to these audits or is getting preferential treatment in the conduct of the audits." [*See* FAA Exhibit 1, Item 6, *Respondent's Answer*, exhibit 4-C, FAA1004.]

[131] *See* FAA Exhibit 1, Item 6, *Respondent's Answer*, exhibit 5-D, FAA1190/SAA5183; FAA Exhibit 1, Item 2,*Complaint*, tab 2, FAA1194/SAA5187.

[132] *See* FAA Exhibit 1, Item 6, *Respondent's Answer*, exhibit 3-I, FAA1850.

[133] FAA Exhibit 1, Item 6, *Respondent's Answer*, exhibit 7-C

[134] *See* FAA Exhibit 1, Item 6, *Respondent's Answer*, exhibit 4-A, FAA1131/SAA5124.

[135] *See* FAA Exhibit 1, Item 6, *Respondent's Answer*, exhibit 3-G, FAA2062/SAA5823.

It appears that each fixed-base operator believes the standards are applied only to its own operation and not to its competitor. That, by itself, is an indicator that the two fixed-base operators are, in fact, being treated in a similar manner.

The Director is not persuaded that the Respondent treated the two fixed-base operators dissimilarly regarding the requirement to meet minimum standards for leased space. Both operators are required to meet the 1999 *Minimum Aviation Standards*. Both have been subjected to leased-space compliance audits. Both have been in violation of the minimum standards for leased space at one time or another, and both were provided the opportunity to correct the deficiency.

The Director finds the Respondent is not currently in violation of grant assurance 22, *Economic Nondiscrimination*, regarding enforcement of minimum standards for fixed-base operator leased-space requirements.

(b) Flight School and Aircraft Rental Business

The Complainant alleges Respondent placed it in an unfair competitive position in violation of grant assurance 22, *Economic Nondiscrimination*, by requiring Complainant to lease the minimum land area and hangar and office space while permitting its competitor, Judice Aviation, to operate a flight school and aircraft rental business without having to meet minimum leased-space standards for those operations.[136]

Table 6 shows the current minimum aviation standards[137] for leased space for both a flight school[138] and an aircraft rental business.[139] These standards were in effect at the time Judice Aviation began operations at the airport.

Table 6: ***Minimum Leased-Space Requirements for Flight School and Aircraft Rental Business***

	Flight School	**Aircraft Rental Business**
Land Area	3,000 sq. ft.	6,000 sq. ft.
Building Space	1,000 sq. ft.	2,000 sq. ft.

Flight School - Initial Agreement (March 1, 2000)

The administrative record shows that Respondent entered into a lease agreement with Judice Aviation effective March 1, 2000. That agreement permitted Judice Aviation to operate a flight school and offer aircraft rentals, as well as to conduct other associated

[136] Complainant also offers flight training and aircraft rental. [*See* FAA Exhibit 1, Item 6A, *Respondent's Answer*, "Memorandum of Points," pages 12-13.]
[137] Shreveport Downtown Airport *Minimum Aviation Standards*, Shreveport Airport Authority, adopted August 24, 1999, and effective September 1, 1999. [*See* FAA Exhibit 1, Item 6, *Respondent's Answer*, exhibit 2-C.]
[138] FAA Exhibit 1, Item 6, *Respondent's Answer*, exhibit 2-C, page 20.
[139] FAA Exhibit 1, Item 6, *Respondent's Answer*, exhibit 2-C, page 24.

activities such as retail sales. The lease identified approximately 912 square feet of office space, but no land area.[140] The administrative record does not identify any other office or land leased to Judice Aviation at this time. As Table 7 below shows, this initial lease agreement did not meet the airport's minimum leased-space requirements for either a flight school or an aircraft rental operation.

Table 7: ***Judice Aviation Leased Space, March 1, 2000*** [141]

	Flight School (Minimum Standards)	Aircraft Rental Business (Minimum Standards)	Judice Aviation Leased Space March 1, 2000
Land Area	3,000 sq. ft.	6,000 sq. ft.	none
Building Space	1,000 sq. ft.	2,000 sq. ft.	912 sq. ft.

The owner of Judice Aviation testified in his December 14, 2001,[142] deposition that he was not aware the Shreveport Airport Authority had established minimum standards for a flight school until approximately April 28, 2000. Even at that time, he testified that he was not aware of the minimum land area requirement.[143] When he became aware of the minimum leased building space requirements, he spoke with airport manager Lewis Maston.[144] According to the deposition, Mr. Maston indicated that Judice Aviation could include in its lease count the space for its shade ports.[145] By doing so, Judice Aviation believed it *may have* met the minimum building space requirement of 1,000 square feet for a flight school.[146]

While Lewis Maston did not directly confirm the testimony of Judice Aviation, he did testify March 1, 2002, [147] that he did not recall any time that Judice Aviation was out of compliance with the minimum standards.[148]

The Director found, however, that the lease agreements for the two shade ports clearly state that no commercial activity may be conducted in or from these areas.[149] As such, the Director is not persuaded that these non-commercial lease areas, designed for aircraft

[140] FAA Exhibit 1, Item 6, *Respondent's Answer*, exhibit 1-F.
[141] *See* FAA Exhibit 1, Item 6, *Respondent's Answer*, exhibit 1-F.
[142] FAA Exhibit 1, Item 2, *Complaint*, tab 7, FAA1393.
[143] At that time, Respondent gave a copy of the Airport Minimum Standards to Judice Aviation. [*See* FAA Exhibit 1, Item 2, *Complaint*, tab 7, pages 39-41, (FAA 1402-1403).
[144] Lewis Maston was the airport manager for the Shreveport Downtown Airport from February 16, 2000 until June 15, 2001. [*See* FAA Exhibit 1, Item 2, *Complaint*, tab 11, pages 7-9, (FAA 1523).]
[145] Judice Aviation leased two shade ports. The size of the shade ports is not described in the agreements. [*See* FAA Exhibit 1, Item 6, *Respondent's Answer*, exhibit 1-I and 1-J, *Complaint,* tab 2.]
[146] No discussion of land area was mentioned at this point. [*See* FAA Exhibit 1, Item 2, *Complaint*, tab 7, page 41 (FAA 1403)].
[147] FAA Exhibit 1, Item 2, *Complaint*, tab 11
[148] FAA Exhibit 1, Item 2, *Complaint*, tab 11, pages 15-17, (FAA 1525).
[149] *See* FAA Exhibit 1, Item 6, *Respondent's Answer*, exhibits 1-I and 1-J, #8.

parking only, should be included in the minimum leased-space requirements for conducting commercial operations on the airport.

The record shows that Judice Aviation was allowed to initiate its flight school service without meeting the minimum standards for leased office and land area. This apparently was done with the knowledge of the airport manager. As such, the Respondent may have been in violation of its grant assurances regarding economic nondiscrimination at that time.

It is the intent of the FAA Airport Compliance program, however, to evaluate an airport sponsor's *current* compliance with grant assurances. Where an airport sponsor is in violation of its grant assurances, the goal of the FAA is to bring that airport sponsor into compliance. In those cases where an airport sponsor has *corrected* a past violation and is currently in compliance with its grant assurances, the FAA will not find the airport sponsor in noncompliance. In this case, the administrative record shows that a revised agreement between the Respondent and Judice Aviation resolved the leased-space requirement for the flight school operation.

Flight School - Revised Agreement (March 1, 2002)
On March 1, 2002, Respondent entered into a new agreement with Judice Aviation for approximately 1,204 square feet of building space and 6,300 square feet of land.[150]

As Table 8 shows, the 2002 revised agreement brings Judice Aviation into compliance with the airport's minimum standards for land area for both the flight school and the aircraft rental business.[151] The revised agreement indicates sufficient office space to meet the minimum leased-space requirement for the flight school, but not for the aircraft rental business.

Table 8: *Judice Aviation Leased Space, March 1, 2002*

	Flight School (Minimum Standards)	Aircraft Rental Business (Minimum Standards)	Judice Aviation Leased Space March 1, 2002
Land Area	3,000 sq. ft.	6,000 sq. ft.	6,300 sq. ft.
Building Space	1,000 sq. ft.	2,000 sq. ft.	1,204 sq. ft.

If Judice Aviation is operating only a flight school, it is in compliance with the minimum leased-space standards. If, however, Judice Aviation is also operating an aircraft rental

[150] The land is listed as 70 x 90 square feet. [*See* FAA Exhibit 1, Item 6, *Respondent's Answer*, exhibit 1-H.]
[151] The Complainant alleges Respondent tried to assign additional land area to Judice Aviation so Judice Aviation would be in compliance with the minimum 3,000 square feet of land area needed to operate a flight school. [*See* FAA Exhibit 1, Item 2, *Complaint*, page 15.] Since Judice Aviation meets the land area requirement for both the flight school and the aircraft rental business with its revised lease agreement, we are unclear how the Complainant's statement relates to this issue.

business, it is not in compliance with the minimum leased-space standards established by the Respondent.

Aircraft Rental Business

The Complainant claims that Judice Aviation rents aircraft, but has never applied for or been granted permission by the Respondent to act as an aircraft rental operator.[152]

The administrative record shows that the Shreveport Airport Authority met on February 17, 2000, and approved leased space for Judice Aviation to operate as a flight school.[153] Subsequent to that meeting, and without further discussion with the Shreveport Airport Authority, the airport manager agreed with Judice Aviation's owner to revise the lease agreement to include aircraft rental.[154]

The lease agreement itself states that leased premises may be used for the purpose of "operating a flight school, FAA testing center, aircraft rentals and associated retail sales." Other commercial uses would require written permission in advance.[155] The lease was signed on behalf of the Shreveport Airport Authority.[156]

Respondent asserts that Judice Aviation is not an aircraft rental operator because it rents aircraft only in connection with its flight training operations and "does not otherwise offer aircraft rentals to the public."[157] The owner of Judice Aviation, on the other hand, discusses aircraft rentals to "someone who came off the street to rent the airplane…"[158] He testifies regarding charging sales tax for aircraft rentals to "people who are not students."[159] He also discusses his bookkeeping entry method for recording rentals to the general public.[160]

The preponderance of substantive evidence demonstrates that Judice Aviation is engaged in an aircraft rental business. As such, the airport's minimum standards call for Judice Aviation to have 6,000 square feet of leased land area and 2,000 square feet of leased office space.[161]

The Respondent states in it Answer that Judice Aviation "currently meets the applicable space requirements for an aircraft rental operator" pursuant to its lease agreement.[162] However, Judice Aviation's revised March 1, 2002, lease agreement does not provide for

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[152] FAA Exhibit 1, Item 2, *Complaint*, page 16.
[153] FAA Exhibit 1, Item 2, *Complaint*, tab 7, pages 34-38, (FAA 1401-1402)
[154] FAA Exhibit 1, Item 2, *Complaint*, tab 7, pages 25, 34-38, (FAA 1399, and 1401-1402).
[155] The same language appears in both the March 1, 2000, lease (see FAA Exhibit 1, Item 6, *Respondent's Answer*, exhibit 1-F) and the March 1, 2002, lease (FAA Exhibit 1, Item 6, *Respondent's Answer*, exhibit 1-H). The March 2000 lease agreement was signed by Ted Roberts, Chairman, on behalf of the Shreveport Airport Authority;
[156] March 2000 lease agreement was signed by Ted Roberts, Chairman, on behalf of the Shreveport Airport Authority. [*See* FAA Exhibit 1, Item 6, *Respondent's Answer*, exhibit 1-F]; the March 2002 lease agreement is also signed by Dr. C.O. Simpkins, Chairman, on behalf of the Shreveport Airport Authority, though the name is difficult to read. [*See* FAA Exhibit 1, Item 6, *Respondent's Answer*, exhibit 1-H.]
[157] FAA Exhibit 1, Item 6A, *Respondent's Answer*, "Memorandum of Points," page 19, #3.
[158] FAA Exhibit 1, Item 2, *Complaint,* tab 7, page 8, (FAA 1394).
[159] FAA Exhibit 1, Item 2, *Complaint*, tab 7, page 9, (FAA 1395).
[160] FAA Exhibit 1, Item 2, *Complaint*, tab 7, pages 18-10, (FAA 1397).
[161] FAA Exhibit 1, Item 6, *Respondent's Answer*, exhibit 2-C,
[162] FAA Exhibit 1, Item 6A, *Respondent's Answer*, "Memorandum of Points," page 19, #3.

the 2,000 square-foot minimum office space required to operate an aircraft rental business.[163] The record does not identify other property leased by Judice Aviation other than two shade ports.

The record shows the complainant has been required to meet the leased-space minimum standards that became effective September 1, 1999. Judice Aviation is also obligated to meet those minimum standards as they apply to the flight school and aircraft rental business. The Director is persuaded that the Respondent has enforced those minimum standards against the Complainant but not against one of its competitors, Judice Aviation.

The Director finds the Respondent is in violation of grant assurance 22, *Economic Nondiscrimination*, regarding the disparate enforcement of minimum standards for leased space as it relates to aircraft rental operations. The Director does not consider the business closure of Judice Aviation to meet the intent of corrective action in this matter.

(3) Minimum Standards for Staffing Requirements.

The Complainant alleges Respondent placed it in an unfair competitive position in violation of grant assurance 22, *Economic Nondiscrimination*, by (a) requiring Complainant to maintain more stringent staffing levels than were required of its fixed-base operator competitor, Air One,[164] and by (b) permitting unauthorized Aircraft Airframe and Engine Maintenance and Repair Operators[165] to operate on the airport in direct competition with Complainant without meeting the minimum standards.[166]

(a) Fixed-base Operator Competitor, Air One

The Complainant alleges Respondent applied the airport's minimum standards for staffing requirements in a more restrictive manner for Complainant than for its fixed-base operator competitor, Air One. Complainant alleges this action places it in an unfair competitive position in violation of grant assurance 22, *Economic Nondiscrimination*.[167]

The airport's 1999 *Minimum Aviation Standards* require fixed-base operators to have one full-time manager with five years experience in aircraft engine maintenance and repair,[168] one licensed Airframe and Powerplant Technician (A&P), and one Aircraft Inspector

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[163] The lease shows approximately 1,204 sq. ft. of leased office space. [*See* FAA Exhibit 1, Item 6, *Respondent's Answer*, exhibit 1-H.]
[164] FAA Exhibit 1, Item 2, *Complaint*, pages 22-23 and Item 2, *Complaint*, tab 1, page 4 (FAA1003)
[165] There are also Aircraft Repair Service providers on the airport, but the Complaint is directed toward Aircraft Airframe and Engine Maintenance and Repair Operators only. [See FAA Exhibit 1, Item 2, *Complaint*, page 28.
[166] FAA Exhibit 1, Item 2, *Complaint*, pages 28-29, #71.
[167] FAA Exhibit 1, Item 2, *Complaint*, pages 22-23 and Item 2, *Complaint*, tab 1, pages 4-5 (FAA1003-4)
[168] FAA Exhibit 1, Item 6, *Respondent's Answer*, exhibit 2-C, page 11 (C.2)

(AI)[169] to perform aircraft engine and accessory maintenance and repair. The standards are silent regarding the employment status of the A&P and AI technicians. The minimum standards also state that the fixed-base operator "must provide personnel trained to meet all requirements for the repair and maintenance of aircraft, engine parts, and accessories."[170]

Complainant alleges the Respondent allowed its competitor, Air One, to operate without meeting these minimum staffing levels, yet requires the Complainant to meet or exceed these minimum standards.[171]

Specifically, the Complainant alleges that its competitor, Air One, did not have full-time staff to perform aircraft maintenance. Rather, Air One used contract mechanics[172] as needed. At the same time, Complainant alleges it is required to employee two full-time mechanics.[173] The Complainant alleges that it also requested to use contract mechanics, but the Respondent did not allow Complainant to do so.

In its Answer, the Respondent states that it has investigated the Complainant's allegations regarding Air One's use of mechanics. The Respondent determined that Air One contract mechanics satisfied the requirement for both the A&P and AI technicians.[174] In addition, the Respondent states that it does not dictate how fixed-base operators comply with minimum standards for aircraft mechanics so long as the required mechanics are available to serve airport users. The Respondent requires fixed-base operators to document how they meet this requirement when the Respondent conducts compliance audits.

Further, the Respondent denies that it required Complainant to employ the required mechanics on a full-time basis. Respondent argues that the Complainant presents no evidence to support such as allegation, and states that deposition testimony does not support such a claim.[175]

The Director disagrees with the Respondent in this matter. The 1999 *Minimum Aviation Standards* are subject to interpretation regarding the employment status of mechanics working for fixed-base operators. The Respondent did not develop a policy or establish

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[169] FAA Exhibit 1, Item 6, *Respondent's Answer*, exhibit 2-C, page 12 (C.4). AI has been referred to as "Authorized Inspector" in other documents. (*See* FAA Exhibit 1, Item 6, *Respondent's Answer*, exhibit 8-A (SAA5043/FAA1874).
[170] FAA Exhibit 1, Item 6, *Respondent's Answer*, exhibit C-2, page 11, #C.3
[171] FAA Exhibit 1, Item 2, *Complaint*, page 22, #55 and #58.
[172] The term "mechanics" is used in this report to include the Airframe and Powerplant Technician (A&P) and the Aircraft Inspector (AI), as well as personnel trained to meet all requirements for the repair and maintenance of aircraft, engine parts, and accessories.
[173] FAA Exhibit 1, Item 2, *Complaint*, pgs. 22-25, and Item 2, *Complaint*, tab 5, page 100 (FAA 1315).
[174] In a January 23, 2001 letter, Respondent requested Air One to provide the names and certificate numbers of A&P and AI staff. [FAA Exhibit 1, Item 6, *Respondent's Answer*, exhibit 8-A.] Air One responded January 31, 2001 with the names of the staff members. [FAA Exhibit 1, Item 6, *Respondent's Answer*, exhibit 8-B].
[175] FAA Exhibit 1, Item 6A, *Respondent's Answer*, "Memorandum of Points," page 20, #5.

clear guidelines for meeting this standard. As such, the standard may be applied inequitably depending upon the interpretation of the individual enforcing the standard.

Deposition testimony in the administrative record shows the disparity in interpreting this standard:

- Director of Airports Roy Miller, Jr., testified October 9, 2001, that he interpreted the minimum standards to mean the A&P and AI mechanics would be full-time employees of the fixed-base operator.[176]

- Complainant[177] testified October 31, 2001, that former airport manager Lewis Maston[178] told him that the A&P and AI positions had to be filled by two separate full-time payroll employees.[179]

- Former airport manager Lewis Maston testified March 1, 2002, that he interpreted the minimum standards to require certificated staff for both the A&P and AI positions, but that the standards were "gray" regarding whether one individual could fulfill both of those roles. He testified that he had not told anyone that two people were required.[180] He did state that the mechanics had to be employees of the fixed-base operator, but did not necessarily have to be employed on a full-time basis.[181]

The Complainant alleges the Respondent permits its competitor, Air One, to circumvent the minimum standards by using contract mechanics rather then employing full-time mechanics.

The minimum standards do not specify that mechanics must be full-time employees of the fixed-base operator. Neither do they directly prevent using contract mechanics to provide the services required. Testimony provided by airport management in 2001 and 2002 demonstrates that management interpretation of the minimum standards on A&P and AI mechanics has been inconsistent. In this Complaint, Respondent answers that the A&P and AI mechanics must be certified, but are not required to be full-time employees of the fixed-base operator.

Since the minimum standards do not require A&P and AI mechanics to be full-time employees of the fixed-base operator, the Director cannot determine that the Respondent allowed Air One to circumvent the minimum standards by using contract mechanics.

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[176] FAA Exhibit 1, Item 2, *Complaint*, tab 6, pages 73-74 (FAA1370)
[177] Glenn Adams testified as the owner of Complainant Royal Air, Inc.
[178] Lewis Maston was the airport manager for the Shreveport Downtown Airport from February 16, 2000 until June 15, 2001. [*See* FAA Exhibit 1, Item 2, *Complaint*, tab 11, pages 7-9, (FAA 1523).]
[179] FAA Exhibit 1, Item 2, *Complaint*, tab 5, page 100 (FAA1315).
[180] FAA Exhibit 1, Item 2, *Complaint*, tab 11, page 53 (FAA1534).
[181] FAA Exhibit 1, Item 2, *Complaint*, tab 11, pages 54-55 (FAA1535).

However, the record does provide sufficient evidence to suggest Complainant may have been advised by airport management that the A&P and AI mechanics had to be employees of the fixed-base operator rather than contract mechanics. That places a higher standard on the Complainant than on its competing fixed-base operator, putting the Complainant at an economic disadvantage in violation of grant assurance 22, *Economic Nondiscrimination.*

The Director finds the Respondent is in violation of grant assurance 22, *Economic Nondiscrimination*, by applying different standards to the Complainant for providing A&P and AI mechanic services than to its competing fixed-base operator. The Director does not consider the business closure of fixed-base operator Air One to meet the intent of corrective action in this matter.

(b) Freelance Mechanics:
Aircraft Airframe and Engine Maintenance and Repair Operators

Complainant alleges Respondent placed it in a discriminatory economic position by permitting unauthorized Aircraft Airframe and Engine Maintenance and Repair Operators (hereinafter referred to as freelance mechanics)[182] to operate on the airport in direct competition with Complainant and without meeting the minimum standards.[183]

Respondent has established minimums standards for *authorized* Aircraft Airframe and Engine Maintenance and Repair Operators. These standards generally require all Aircraft Airframe and Engine Maintenance and Repair Operators to:[184]

- Enter into a contract with the Respondent,
- Comply with certain land area and building space requirements,
- Comply with FAA and local requirements, and
- Maintain minimum levels of insurance.

Respondent states these minimum standards are designed to protect airport users and other commercial operators, as well as to promote compliance with aircraft mechanic requirements.[185]

Complainant does not allege the minimum standards are insufficient. Rather, Complainant alleges Respondent does not enforce those standards consistently.[186]

The Respondent denies this allegation.[187] The Director of Airports confirmed in testimony that only those mechanics meeting the airport minimum standards or who are

[182] There are also Aircraft Repair Service providers on the airport, but the Complaint is directed toward Aircraft Airframe and Engine Maintenance and Repair Operators only. [See FAA Exhibit 1, Item 2, *Complaint*, page 28.
[183] FAA Exhibit 1, Item 2, *Complaint*, pages 28-31.
[184] See FAA Exhibit 1, Item 6, *Respondent's Answer*, exhibit 2-C, pages 14-15.
[185] FAA Exhibit 1, Item 6A, *Respondent's Answer*, "Memorandum of Points," page 21.
[186] *See* FAA Exhibit 1, Item 2, *Complaint*, pages 28-32.
[187] FAA Exhibit 1, Item 6, *Respondent's Answer*, pages 11-13.

direct employees of the aircraft owner may perform aircraft maintenance on the airport.[188] In addition, Respondent provides an October 5, 2000, memorandum from the airport manager to the chief of airport security proposing enforcement procedures to guard against using freelance mechanics on the airport.[189] Respondent states it has thoroughly investigated past complaints.[190]

Complainant provided the Respondent the names of six individuals it believed were operating as freelance mechanics in violation of the airport's minimum standards in August 2001.[191] The Respondent replied in a letter dated August 29, 2001, that it would investigate the allegations and make a report to the Board.[192] If such a report was made, it was not referred to by the Respondent in its Answer to this Complaint.

The Director of Airports testified October 9, 2001, that he asked the airport's manager of special projects to investigate the individuals listed by the Complainant. The manager forwarded letters to these individuals asking if they were conducting Aircraft Airframe and Engine Maintenance and Repair work for hire.[193] The Director of Airports was unaware of whether any responses had been received as of the date of testimony.[194]

The Director of Airports testified that an unauthorized mechanic operating at the airport would be asked to get a permit or cease operations.[195] He also stated that the matter would be referred to the City Attorney's office should the individual fail to comply with the request. No one had been referred as of October 9, 2001.[196]

In addition, Respondent states it has established a protocol to guard against, and respond to, freelance mechanics operating on the airport in the future.

The 1999 *Minimum Aviation Standards* and the airport's procedures to guard against unauthorized mechanics operating at the airport were in effect at the time Complainant sent its list of freelance mechanics to the Respondent.

Respondent acknowledges that it has found it quite difficult, as a practical matter, to guard against this type of activity. Respondent, however, asserts that its actions are reasonable and appropriate to the activity.[197]

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[188] FAA Exhibit 1, Item 2, *Complaint*, tab 6, page 149, (FAA 1389).
[189] FAA Exhibit 1, Item 6, *Respondent's Answer*, exhibit 10-A.
[190] FAA Exhibit 1, Item 6A, *Respondent's Answer*, "Memorandum of Points," page 21.
[191] Letters dated August 16, 2001, and August 17, 2001, list six individuals who may be operating as freelance mechanics on the airport. [FAA Exhibit 1, Item 2, *Complaint*, tab 3, pages FAA 1273-1275.]
[192] FAA Exhibit 1, Item 2, *Complaint*, tab 3, page FAA 1276.
[193] *See* FAA Exhibit 1, Item 2, *Complaint,* tab 6, pages 74-75, (FAA 1370).
[194] FAA Exhibit 1, Item 2, *Complaint*, tab 6, page 75, (FAA 1370).
[195] FAA Exhibit 1, Item 2, *Complaint*, tab 6, page 61, (FAA 1367).
[196] FAA Exhibit 1, Item 2, *Complaint*, tab 6, pages 61-62, (FAA1367). (Testimony was give October 9, 2001.)
[197] FAA Exhibit 1, Item 6A, *Respondent's Answer*, "Memorandum of Points," page 21.

The Director disagrees with the Respondent. It is apparent that Respondent's actions and procedures for enforcing the standards are not adequate. The Director finds Respondent has allowed freelance mechanics to operate at the airport without complying with the 1999 *Minimum Aviation Standards*. Complainant, on the other hand, is being held to these standards.

Grant assurance 22, *Economic Nondiscrimination*, requires the airport sponsor to make the airport available for public use on reasonable terms and without unjust discrimination to all types, kinds, and classes of aeronautical activities, including commercial aeronautical activities offering services to the public. Applying the minimum standards inconsistently places a greater burden on those aeronautical service providers that adhere to the standards.

The Director finds the Respondent is in violation of grant assurance 22, E*conomic Nondiscrimination,* by permitting – or failing to prevent – unauthorized Aircraft Airframe and Engine Maintenance and Repair Operators to operate on the airport in direct competition with Complainant and without meeting the minimum standards.

(4) Minimum Standards for Insurance Coverage

The Complainant alleges Respondent required it to meet the minimum standards for insurance coverage, but allowed its competitors to operate without the required minimum levels of insurance. Complainant alleges this action places Complainant at an unfair economic disadvantage in violation of grant assurance 22, *Economic Nondiscrimination*. Specifically, Complainant alleges (a) its fixed-base operator competitor, Air One, was allowed to operate without meeting the minimum insurance coverage,[198] and (b) a competing flight school and aircraft rental business, Judice Aviation, was not required to carry the full level of insurance required under the minimum standards. Subsequent to the filing of this Part 16 Complaint, another competing flight school and aircraft rental business began operating on the airport. Complainant alleges Respondent does not require this tenant, Pronto Delivery Service, Inc., to meet the minimum standards for insurance.[199]

(a) Competing Fixed-base Operator, Air One

The Complainant alleges Respondent allowed competitor Air One to operate without the required minimum level of insurance, while requiring Complainant to meet the minimum level under the 1999 *Minimum Aviation Standards*. Complainant alleges this action placed it at an unfair economic disadvantage in violation of grant assurance 22, *Economic Nondiscrimination*.

The Respondent states in its Answer that it investigated the competitor Air One's compliance with insurance requirements. The record evidence shows:

[198] *See* FAA Exhibit 1, Item 2, *Complaint*, page 25, #63. (Complainant generally refers to Air One's failure to maintain insurance.)
[199] FAA Exhibit 1, Item 16, *Motion to Supplement Record*, #5.

- On July 5, 2001, Hiller Group, Incorporated informed Respondent that Air One was not currently covered by insurance.[200] On that same date, Respondent hand-delivered an order to Air One to cease all refueling operations as a result of its failure to maintain the required insurance.[201]

- On July 6, 2001, Respondent reiterated to competitor Air One that it may not self-fuel prior to providing the Shreveport Airport Authority with satisfactory evidence of insurance coverage.[202]

- Also on July 6, 2001, Respondent advised competitor Air One that a fax from the Insurance Division of Chevron confirmed Air One's insurance policy was valid until March 1, 2002. The Respondent rescinded its order that Air One cease and desist selling fuel.[203]

- On July 9, 2001, an attorney for Air One sent a fax advising that Air One had ceased operations as required by the July 5th letter. In the same fax, Air One requested confirmation that the initial determination was incorrect and Air One could resume operations as noted in the July 6th letter.[204] Respondent advised Air Ones' attorney that Respondent had received conflicting information regarding Air One's insurance status. Respondent informed Air One's attorney that Respondent's attorneys had not yet made a final determination. Respondent informed Air One's attorney that Air One may, in fact, be ordered to cease fuel sales in the future.[205]

- On July 9, 2001, Respondent received a fax from the Chevron Treasury Insurance Division clarifying the issue of Air One's insurance. According to the fax, Air One's insurance coverage was tied to its relationship with Chevron as an authorized Chevron dealer. That relationship ended on June 27, 2001. Accordingly, Air One's insurance lapsed as of June 29, 2001.[206]

- Also on July 9, 2001, Respondent hand delivered a letter to Air One ordering it to cease all fixed-base operations as a result of its failure to maintain the required insurance.[207]

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[200] FAA Exhibit 1, Item 6, *Respondent's Answer*, exhibit 9-B.
[201] FAA Exhibit 1, Item 6, *Respondent's Answer*, exhibit 9-B.
[202] FAA Exhibit 1, Item 6, *Respondent's Answer*, exhibit 9-C. This letter is in response to a letter from Air One, which is not included in the record evidence. The letter states "self fuel." It may have been intended to say "sell fuel." In either case, it does not alter the intent of Respondent's letter that Air One must have insurance prior to engaging in fueling operations.
[203] FAA Exhibit 1, Item 6, *Respondent's Answer*, exhibit 9-D. (Fax from the insurance company is not attached and is not included in the record evidence.) This letter states "selling fuel".
[204] FAA Exhibit 1, Item 6, *Respondent's Answer*, exhibit 9-G.
[205] FAA Exhibit 1, Item 6, *Respondent's Answer*, exhibit 9-G.
[206] FAA Exhibit 1, Item 6, *Respondent's Answer*, exhibit 9-E
[207] FAA Exhibit 1, Item 6, *Respondent's Answer*, exhibit 9-E.

- On July 11, 2001, Respondent advised Air One that it had received a fax from Hiller Group, Incorporated, that Air One's insurance policy had been reinstated. Air One was advised that it could resume its fixed-base operations.[208]

The record evidence supports Respondent's contention that it investigated and enforced the minimum requirements for insurance coverage.

The Director finds the Respondent is not currently in violation of grant assurance 22, *Economic Nondiscrimination*, regarding its enforcement of minimum standards for fixed-base operator insurance.

(b) Competing Flight School and Aircraft Rental Business, Judice Aviation

The Complainant alludes to an allegation that the Respondent allowed Judice Aviation to operate its flight school and aircraft rental operation without the required level of insurance while requiring the Complainant to carry the full level of insurance required under the minimum standards.

In its Complaint, Complainant states that the minimum requirement for insurance coverage at the time Judice Aviation began operations was half the amount required under the revised minimum standards.[209] While it is implied, Complainant does not state that Judice Aviation failed to carry the increased insurance coverage. Nonetheless, in the interest of reviewing the Complaint fully, the Director has considered this issue for analysis in this section.

The 1999 *Minimum Aviation Standards*[210] require the following insurance coverage for flight training and aircraft rental operations:

- One million dollars ($1,000,000) for liability, bodily injury, and property damage for flight training operations.[211] In addition, flight training operators are required to have hangar keepers' liability insurance in the amount of one million dollars ($1,000,000) whenever property other than that of the lessee is located on the leased premises for any purpose.[212]

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[208] FAA Exhibit 1, Item 6, *Respondent's Answer*, exhibit 9-F. (Fax from Hiller Group, Inc., was not included in the record evidence.)
[209] FAA Exhibit 1, Item 2, *Complaint*, pages 14 and 17.
[210] FAA Exhibit 1, Item 2, *Complaint*, tab 2, FAA1227/SAA5219.
[211] FAA Exhibit 1, Item 2, *Complaint*, tab 2, FAA1240-41/SAA5232-33. In addition, hangar keepers liability insurance is required whenever property other than that of the lessee is located on the leased premises for any purpose. [FAA Exhibit 1, Item 6, *Respondent's Answer*, exhibit 2-C, page 5 and Item 17, *Respondent's Reply to Complainant's Motion to Supplement Record*, page 5.]
[212] FAA Exhibit 1, Item 6, *Respondent's Answer*, exhibit 2-C, pages 5 and 20.

- One million dollars ($1,000,000) in liability, bodily injury, property, and student and renters' liability for aircraft rental operations.[213]

In both cases, it is for "each occurrence."

The administrative record shows Judice Aviation maintained liability coverage in the amount of one million dollars for single limit bodily injury, and property damage.[214] This appears to meet the insurance requirement for the flight training operation. There is no indication in the record that Judice Aviation had property other than its own on the premises; therefore, it would not be required to carry hangar keepers' insurance.

The administrative record also shows Judice Aviation carried owners', landlords', and tenants' liability insurance in the amount of one million dollars for each occurrence.[215] The record does not provide clear evidence of insurance for student and renters' liability in the amount of one million dollars, but does include a premium payment for such insurance on a policy dated October 28, 1999.[216]

The administrative record provides no direct evidence to suggest the Respondent allowed Judice Aviation to operate its flight school or aircraft rental operation without the appropriate level of insurance coverage. Therefore, the Director finds the Respondent is not in violation of grant assurance 22, *Economic Nondiscrimination*, regarding the Respondent's enforcement of minimum insurance standards for Judice Aviation.

(c) Competing Flight School and Aircraft Rental Business, Pronto Delivery Service, Inc.

Subsequent to filing this Part 16 Complaint, another airport tenant began offering flight training in conjunction with aircraft rental services at the Shreveport Downtown Airport.[217] Complainant alleges that the Respondent allows this airport tenant to operate its flight school and aircraft rental operation without the required level of insurance while requiring the Complainant to carry the full level of insurance required under the 1999 *Minimum Aviation Standards*.[218]

As noted above, the 1999 *Minimum Aviation Standards* require flight training operators to carry insurance in the amount of one million dollars ($1,000,000) for liability, bodily injury, and property damage, as well as one million dollars ($1,000,000) for hangar keepers' liability, if appropriate.

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[213] FAA Exhibit 1, Item 2, *Complaint*, tab 2, FAA1242/SAA5234.
[214] Policy 81402 was in effect until September 29, 2002, which is four months beyond the May 31, 2002, date of Complainant's Part 16 complaint. [*See* FAA Exhibit 1, Item 2, *Complaint*, tab 16, #8 (FAA2323).]
[215] Policy # 852801 was in effect through August 10, 2002 (ten weeks beyond the May 31, 2002, date of Complainant's Part 16 complaint. [*See* FAA Exhibit 1, Item 2, *Complaint*, tab 16, #10-#11 (FAA2325-FAA2326).]
[216] See FAA Exhibit 1, Item 2, *Complaint*, tab 16, #12, "Aircraft Insurance Policy," page FAA2327.
[217] *See* FAA Exhibit 1, Item 16, *Motion to Supplement Record*, page 11/SAA8712.
[218] *See* FAA Exhibit 1, Item 16, *Motion to Supplement Record*.

Respondent confirms that Pronto Delivery Service, Inc., conducts flight training services using two aircraft owned by Pronto Aviation, Inc.[219] Respondent states, and the record supports, that the two aircraft used for flight training are insured by Pronto Aviation, Inc. The Certificate of Insurance shows coverage in the amount of one million dollars ($1,000,000) each occurrence for aircraft liability, bodily injury, and property damage.

This appears to meet the minimum insurance requirements for flight training. Complainant, however, provides a May 6, 2003, letter from the City of Shreveport Risk Manager advising that the type of insurance carried by Pronto Delivery Service, Inc., is "not acceptable for flight training operations."[220]

Complainant also states that Pronto Delivery Service, Inc. operates an aircraft rental business in addition to its flight training operation.[221] The record supports this statement.[222] As such, Pronto Delivery Service, Inc., is required to carry one million dollars ($1,000,000) in liability, bodily injury, property, and student and renters' liability.

The record shows Pronto Delivery Service, Inc. carries only one hundred thousand dollars ($100,000) for student and renters' liability[223] rather than the one million dollars ($1,000,000) required by the 1999 *Minimum Aviation Standards*.[224] Respondent states that "this level of coverage is consistent with the applicable minimum standards."[225]

The Director is not persuaded that insurance coverage for only ten percent (10%) of that required in the written standards is "consistent" with those standards. Therefore, the Director finds the Respondent is in violation of grant assurance 22, *Economic Nondiscrimination*, regarding the Respondent's inconsistent enforcement of minimum insurance standards.

Conclusion on Issue 2: Enforcement of Minimum Standards

The minimum standards applicable to operations at the Shreveport Downtown Airport are those 1999 *Minimum Aviation Standards* adopted August 24, 1999, and effective

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[219] FAA Exhibit 1, Item 17, *Respondent's Reply to Complainant's Motion to Supplement Record*, page 4.
[220] FAA Exhibit 1, Item 16, *Motion to Supplement Record*, "May 6, 2003, letter from Tom D. Cody, page 15/SAA9034.
[221] FAA Exhibit 1, Item 16, *Motion to Supplement Record*, #3.
[222] The record shows that this operator has been doing business on the airport for a number of years. [*See* FAA Exhibit 1, Item 16, *Motion to Supplement Record*, "September 10, 2002, letter from Jeffrey M. Boyd," page SAA8660. In requesting permission to expand its business, Pronto Delivery Service, Inc., sent a letter November 13, 2002, to the Shreveport Airport Authority stating, "The purpose of this letter is to request your permission to run a flight school in conjunction with our aircraft rental business in the space we a leasing in the terminal building." [FAA Exhibit 1, Item 16, *Motion to Supplement Record*, "November 13, 2002, letter from Jeffrey M. Boyd," page SAA8712.] Based on this statement, it appears Pronto Delivery Service, Inc., may have been operating an aircraft rental business prior to initiating its flight training operation.
[223] See FAA Exhibit 1, Item 16, *Motion to Supplement Record*, "Certificate of Insurance," page 16/SAA9035.
[224] See FAA Exhibit 1, Item 6, *Respondent's Answer*, exhibit 2-C, page 26, item C.
[225] FAA Exhibit 1, Item 17, *Respondent's Reply to Complainant's Motion to Supplement Record*, page 5.

September 1, 1999. From the record evidence, it appears the Respondent's intent may be to enforce the minimum standards equally, but its actions have not met that intent. The Director found discrepancies in the Respondent's application of the 1999 *Minimum Aviation Standards* to aeronautical users and service providers at the airport. Specifically, the Director found:

- Respondent did not enforce its minimum leased-space requirements for aircraft rental operations;

- Respondent inconsistently interpreted and applied its requirement for fixed-base operators to employ mechanics or to make such mechanics available for repair services; and,

- Respondent did not enforce its policy to ensure only authorized mechanics meeting the minimum standards were providing services on the airport.

- Respondent did not enforce its minimum insurance standards for aircraft rental operations.

As a result, the Director finds the Respondent is in violation of grant assurance 22, *Economic Nondiscrimination*, regarding these discrepancies.

(D) Collection of Rents and Fees

Issue 3: Whether the Respondent permitted some aeronautical tenants to operate on the airport without paying appropriate rents and fees while requiring Complainant to pay such rents and fees in violation of grant assurance 22, *Economic Nondiscrimination*.

Complainant alleges Respondent placed it in an unfair economic position in violation of grant assurance 22, *Economic Nondiscrimination*, by requiring Complainant to pay rent and fees that were not required of its competitors. Specifically, Complainant alleges Respondent permitted (1) competing fixed-base operator, Air One, to operate on the airport without paying appropriate rent and fuel flowage fees, and (2) allowed competing flight school and aircraft rental business, Judice Aviation, to have control of land area without paying rent.

(1) Competing Fixed-base Operator, Air One

Complainant alleges that the Respondent placed Complainant in an unfair competitive position by permitting its competing fixed-base operator, Air One, to operate without making full payment for rent or fuel flowage fees,[226] but requiring Complainant to make such payments without being allowed the "same discount."[227] Complainant further

[226] FAA Exhibit 1, Item 2, *Complaint*, page 26, #66.
[227] Complainant does not identify the discount to which he is referring. [*See* FAA Exhibit 1, Item 2, *Complaint*, page 26, #66.]

alleges that its competitor, Air One, is not required to pay fuel flowage fees on all fuel pumped.[228]

The airport minimum standards require all self-fueling operators to pay a fuel flowage fee monthly.[229] The rate and conditions of the fuel flowage fee are included in the commercial lease agreements. The Respondent's lease agreements with both fixed-base operators provide for identical fuel flowage fees.[230]

Respondent states that it previously identified a violation with Complainant's competitor and demanded payment.[231] This statement is supported by a June 7, 2000, letter in which the Respondent allowed Complainant's competitor approximately one month to make full payment of all past-due rental and fuel flowage fees or to be expelled from the airport.[232] The letter does not provide forgiveness of any portion of the past-due fees.

Respondent further states that it is in the process of retaining an accounting firm to begin routine auditing of fixed-base operators' records to ensure compliance with the fuel flowage fee.[233]

The administrative record confirms that Complainant's competitor made the required past-due payments. In a statement expressing anger that the Respondent did not expel its competitor, Complainant states that the Respondent "concerned itself with collection of back due rent and [fuel] flowage fees…" and that "[competitor] Air One paid its back rent and [fuel] flowage fees."[234]

Airport minimum standards allow the Respondent to collect an additional 12 percent (12%) interest per annum for delinquent payments.[235] Complainant does not allege that Respondent did not collect this interest. By collecting said interest, the Respondent is preventing the Complainant's competitor from enjoying a more favorable position regarding payment of rents and fees.

As stated previously, the FAA compliance program is designed to bring airport sponsors into compliance with their grant assurances. An action by the airport sponsor that corrects a previous compliance violation satisfies the intent of the FAA compliance program. An alleged violation related to Respondent's failure to collect such past-due rents and fees from the competing fixed-base operator was corrected when the rents and fees were collected. The Director finds the Respondent is not currently in violation of grant assurance 22, *Economic Nondiscrimination*, regarding the collection of past-due rents and fees.

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[228] FAA Exhibit 1, Item 2, *Complaint*, page 26, #66.
[229] FAA Exhibit 1, Item 6, *Respondent's Answer*, exhibit 2-C, page 30.
[230] FAA Exhibit 1, Item 6, *Respondent's Answer*, exhibits 1-B and 1-C.
[231] FAA Exhibit 1, Item 6A, *Respondent's Answer*, "Memorandum of Points," page 20.
[232] FAA Exhibit 1, Item 6, *Respondent's Answer*, exhibit 9-A.
[233] FAA Exhibit 1, Item 6A, *Respondent's Answer*, "Memorandum of Points," page 20
[234] FAA Exhibit 1, Item 2, *Complaint*, pages 25-26, #64.
[235] FAA Exhibit 1, Item 6, *Respondent's Answer*, exhibit 2-C, page 5.

(2) Competing Flight School and Aircraft Rental Business, Judice Aviation

The Complainant alleges Respondent placed it in an unfair economic position by assigning land area[236] located directly in front of Complainant's hangar to its competitor, Judice Aviation, without requiring Judice Aviation to pay rent for this space. Complainant also alleges Respondent placed it in an unfair economic position by assigning the land area in question on a ratio that included office space as well as hangar space. [237]

Complainant notes that it subleases Hangar Two. The parking pad in front of that hangar is used by more than one tenant. Complainant objected to the way its competitor was using that space. Specifically, Complainant alleges Judice Aviation parked its airplanes in front of Complainant's hangar and prevented Complainant from moving its own aircraft in and out.[238]

Respondent resolved that issue by dividing the disputed space in front of the hangar. The Director of Airports testified October 9, 2001, that the land area in front of Hangar Two is prorated for use by tenants in those hangars and offices located adjacent to it. The division was based on a square footage ratio of the hangar and the apron.[239] Sixty percent (60%) of the space was reserved for use by Metro Aviation, Inc. or its tenants and 40 percent (40%) reserved for the tenants of Building 2A.[240] The Complainant subleases one-half of the Hangar Two from Metro Aviation, Inc.;[241] Judice Aviation is a tenant of Building 2A.[242]

There are two elements to consider in this issue: (a) whether the Respondent is in violation of grant assurance 22, *Economic Nondiscrimination*, by failing to assess a separate rental fee for competitor's use of the parking pad in front of Complainant's hangar, and (b) whether the Respondent is in violation of grant assurance 22, *Economic Nondiscrimination*, by including office space in its basis for pro-rating and assigning parking pad space.

(a) Rent Payment for Parking Pad

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[236] This land area is also referred to in documents as a parking pad, apron, or ramp.
[237] FAA Exhibit 1, Item 2, *Complaint*, pages 15-16.
[238] FAA Exhibit 1, Item 2, *Complaint*, tab 2, FAA 1013.
[239] FAA Exhibit 1, Item 2, *Complaint*, tab 6, pages 1, 6, and 51-54, (FAA 1352-1353, and 1364-1365).
[240] FAA Exhibit 1, Item 2, *Complaint*, tab 2, FAA 1093 / SAA 5080.
[241] *See* FAA Exhibit 1, Item 2, *Complaint*, tab 13, Adams #4, (FAA 1921 / SAA 6005).
[242] FAA Exhibit 1, Item 2, *Complaint*, tab 6, pages 53-54, (FAA 1365).

Complainant objects to its competitor having access to a portion of the land area in front of Complainant's hangar without paying rent specifically for that area.[243]

Respondent states there is no separate lease agreement or rental rate associated with this use. There is no lease on the apron itself. It goes with the building lease.[244]

Complainant provides no evidence to suggest the Respondent is receiving separate rent for the portion of the pad reserved for Metro Aviation, Inc., from whom Complainant leases its hangar. Nor does the Complainant provide evidence that it pays rent specifically for the use of that space designated for use by Metro Aviation, Inc. and its tenants.

The record evidence shows that neither the Complainant nor its competitor pays a separate rent specially for the land area located in front of Hangar Two. Therefore, the Director is not persuaded that Respondent is in violation of its grant assurances by failing to assess a separate rental fee to Complainant's competitor for the pro-rated parking pad.

(b) Basis for Pro-rating and Assigning Parking Pad Space

Complainant objects to the method used for allocating space on the parking pad. Specifically, Complainant objects to office space being used as a basis for allocating parking pad space.[245]

As noted earlier, the FAA compliance program is designed to monitor airport sponsor compliance with grant assurances, and to bring sponsors into compliance as appropriate. The compliance function does not attempt to control and direct the operations of the airport.[246]

The decision to include or exclude certain areas in pro-rating the allocation of the shared parking pad appropriately belongs with airport management.[247] The Director finds the Respondent is not in violation of grant assurance 22, *Economic Nondiscrimination*, regarding its inclusion of office space in its ratio for allocating the parking pad in front of Hangar Two.

Conclusion on Issue 3: Collection of Rents and Fees

The Director finds the Respondent is not currently in violation of grant assurance 22, *Economic Nondiscrimination*, regarding its collection of rents and fees.

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[243] FAA Exhibit 1, Item 2, *Complaint*, page 15, #32.
[244] *See* FAA Exhibit 1, Item 2, *Complaint*, tab 6, pages 51-52, (FAA 1364).
[245] FAA Exhibit 1, Item 2, *Complaint*, page 15, #32.
[246] *See* FAA Order 5190.6A, Airport Compliance Requirements, 1-1.
[247] The record evidence does not indicate Respondent excluded office space in the allocation methodology for pro-rating other similarly situated areas. In addition, Complainant does not allege the hangar and office space ratio was calculated inaccurately. Had either of these situations been alleged, the Director would have evaluated and addressed Respondent's compliance with grant assurance 22, *Economic Nondiscrimination,* in relation to the actions taken.

VII. CONCLUSION

Upon consideration of the submissions and responses by the parties, the entire record herein, the applicable law and policy, and for the reasons stated above, the Director of the FAA Office of Airport Safety and Standards concludes as follows:

The Shreveport Airport Authority is not currently in violation of grant assurances 22, *Economic Nondiscrimination*, or 23, *Exclusive Rights*, regarding allegations that it impeded Complainant's attempts to establish a commercial self-service fueling facility at the Shreveport Downtown Airport.

- The Shreveport Airport Authority is in violation of grant assurance 22, *Economic Nondiscrimination*, regarding its (a) failure to enforce minimum leased-space requirements for aircraft rental operations, (b) inconsistent interpretation and application of standards requiring fixed-base operators to employ mechanics, (c) failure to prevent unauthorized mechanics from operating on the airport in violation of its minimum standards, and (d) failure to enforce its minimum insurance standards for aircraft rental operations.

- The Shreveport Airport Authority is not currently in violation of grant assurance 22, *Economic Nondiscrimination*, regarding its collection of rents and fees.

ORDER

Accordingly:

1. The Shreveport Airport Authority, as owner and sponsor for the Shreveport Downtown Airport, is hereby required to submit a corrective action plan within 30 days to the Louisiana Airports District Office with a copy to the FAA Director of Airport Safety and Standards. Failure to provide an acceptable corrective action plan within the designated time may result in the FAA taking appropriate enforcement action, including withholding of approval of any application by the Shreveport Airport Authority for grants for the Shreveport Downtown Airport pursuant to 49 U.S.C. § 47114(d), 47115 or 47116.[248] The corrective action plan will need to address how the Shreveport Airport Authority intends to complete the following measures and the projected time-frame for completion:

[248] The FAA, in exercising its prosecutorial discretion, would in this case elect to only withhold approval for applications by the Shreveport Airport Authority for grants for the Shreveport Downtown Airport due to the location and limited nature of the compliance violations. The FAA, however, could have elected to suspend all entitlement and discretionary grants for airports under the control and operation of the Shreveport Airport Authority, including grants designated for the Shreveport Regional Airport.

a. Establish *written* criteria defining those activities appropriately conducted as part of a flight training program and those activities more appropriately identified as an aircraft rental operation.

b. Bring all aircraft rental operators into compliance with the leased-space requirements under the 1999 *Minimum Aviation Standards* or modify the minimum standards, if appropriate, to account for situations when spacing requirements are not practical.

c. Establish *written* guidance to clarify staffing standards for fixed-base operators under the 1999 *Minimum Aviation Standards*.

d. Bring fixed-base operators into compliance with the 1999 *Minimum Aviation Standards* and with the *written* clarifying guidance on staffing standards as appropriate.

e. Establish effective and prudent measures of enforcement to ensure unauthorized mechanics do not provide services on the airport in violation of the airport's 1999 *Minimum Aviation Standards*.

f. Bring all aircraft rental operators into compliance with the 1999 *Minimum Aviation Standards* for insurance.

2. All motions not expressly granted in this Determination are denied.

These Determinations are made under 49 U.S.C. §§ 40103(e), 44502, 40113, 40114, 46104, and 46110, respectively, and 49 U.S.C. §§ 47105(b), 47107(a)(1)(2)(3)(5)(6)(7)(8)(17), 47107(g)(1), 47110, 47111(d), 47122, respectively.

RIGHT OF APPEAL

This Director's determination is an initial agency determination and does not constitute a final agency decision and order subject to judicial review. [Title 14 CFR 16.247(b)(2).] A party to this proceeding adversely affected by the Director's determination may appeal the initial determination to the FAA Associate Administrator for Airports pursuant to 14 CFR 16.33(b) within thirty (30) days after service of the Director's determination.

SIGNED January 9, 2004

_____ _____

David L. Bennett
Director, Office of Airport
Safety and Standards

Date

FAA Exhibit 1
Docket No. 16-02-06

Director's Determination
INDEX OF ADMINISTRATIVE RECORD
Docket No. 16-02-06

Royal Air, Inc., Complainant
v.
City of Shreveport, through the
Shreveport Airport Authority, Respondent

The following documents (items) constitute the administrative record in this proceeding:

Item 1 May 30, 2002, Certificate of Attempts at Pre-complaint Resolution

Item 2 May 31, 2002, formal *Complaint* filed by Royal Air, Inc. (Complainant) against the City of Shreveport through the Shreveport Airport Authority (Respondent), including Exhibits contained in Volume I tabs 1 through 12 and Volume II tabs 13 through 19.

Item 3 July 2, 2002, FAA Notice of Docketing for Complaint as Docket No. 16-02-06.

Item 4 July 29, 2002, letter from the FAA regarding Respondent's request for an extension of time to file an answer.

Item 5 August 12, 2002, FAA approval of extension of time to permit Respondent to file an answer on or before August 23, 2002.

Item 6 August 23, 2002, *Respondent's Answer to Complaint*, including Exhibits 1-A through 10-A.

Item 6A August 23, 2002, *Respondent's Answer to Complaint*, "Memorandum of Points and Authorities in Support of Motion to Dismiss."

Item 6B August 23, 2002, *Motion to Dismiss*

Item 7 September 3, 2002, letter from FAA granting an extension of time for Complainant to file a Reply to Respondent's Answer and any pending motions.

Item 8	September 11, 2002, corrected copy of *Complainant's Reply to Respondent's Answer* and *Response to Complainant's Motion to Dismiss* with Exhibits.
Item 9	September 19, 2002, *Respondent's Rebuttal* with Exhibits 11 through 13.
Item 10	Airport Master Record, FAA Form 5010, dated December 17, 2002.
Item 11	Grant History
Item 12	January 10, 2003, *Notice of Extension of Time* extending the date by which a Director's Determination will be issued to March 7, 2003.
Item 13	March 7, 2003, *Notice of Extension of Time* extending the date by which a Director's Determination will be issued to May 7, 2003.
Item 14	May 20, 2003, *Notice of Extension of Time* extending the date by which a Director's Determination will be issued to July 31, 2003.
Item 15	August 4, 2003, *Notice of Extension of Time* extending the date by which a Director's Determination will be made to October 15, 2003.
Item 16	August 27, 2003, *Motion to Supplement Record*, submitted by Complainant with Exhibits
Item 17	October 8, 2003, *Respondent's Reply to Complainant's Motion to Supplement Record* with Exhibit 1.
Item 18	October 15, 2003, FAA Order granting Complainant's Motion to Supplement the Record.